

SPECIAL BUSINESS MEETING  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of:                     )  
  )  
Special Business Meeting            )  
  )  
\_\_\_\_\_                              )

CALIFORNIA ENERGY COMMISSION  
HEARING ROOM A  
1516 NINTH STREET  
SACRAMENTO, CALIFORNIA

WEDNESDAY, DECEMBER 23, 2004  
9:07 A.M.

Reported by:  
Peter Petty  
Contract No. 150-04-001

PETERS SHORTHAND REPORTING CORPORATION   (916) 362-2345

COMMISSIONERS PRESENT

William J. Keese, Chairman

Arthur H. Rosenfeld

James D. Boyd

John L. Geesman

Jackalyne Pfannenstiel

STAFF PRESENT

William Chamberlain, Chief Counsel

Robert Therkelsen, Executive Director

Garret Shean, Hearing Officer

David Abelson, Senior Staff Counsel

James Reede, Jr., Project Manager

ALSO PRESENT

John A. McKinsey, Attorney  
Stoel, Rives, LLP  
El Segundo Power II LLC

David Lloyd, Secretary  
El Segundo Power II LLC

Tom Luster  
California Coastal Commission

Tracy Egoscue  
Santa Monica Baykeeper

Craig Shuman  
Heal The Bay

Tom Raftican  
United Anglers of Southern California

James Hansen  
City of El Segundo

ALSO PRESENT

Bill Eison  
Residents for a Quality City  
(via teleconference)

Jim Sphoonmaker  
Electric Power CC Staff

Michelle Murphy, Intervenor  
(via teleconference)

Bob Perkins, Intervenor  
(via teleconference)

Laurie Jester  
City of Manhattan Beach  
(via teleconference)

Bill Brand  
(via teleconference)

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## P R O C E E D I N G S

9:07 a.m.

CHAIRMAN KEESE: We'll call this meeting of the Energy Commission to order. We'll recite the Pledge.

(Whereupon the Pledge of Allegiance was recited in unison.)

CHAIRMAN KEESE: Good morning. Mr. Shean.

MR. SHEAN: Mr. Chairman and Members of the Commission, I'm Garret Shean, the Hearing Officer for the El Segundo Power Redevelopment project. The project owner is El Segundo Power II LLC. The AFC Committee, consisting of Chairman Keese and Commissioner Boyd, issued a second revised Presiding Member's Proposed Decision on November 23, 2004. That proposed decision is now before you for consideration and possible adoption by the Commission.

CHAIRMAN KEESE: Thank you, Mr. Shean. There is an errata out on the table. I don't know if everybody's picked it up. Let me read it into the record at this point.

On page 1 delete the last sentence of the first paragraph. On page 54 delete the

1 reference to a now stricken footnote 2 in the  
2 third paragraph. On page 60 delete the last  
3 sentence of the second paragraph. Page 60 and 61  
4 delete the last paragraph on page 60 that ends on  
5 page 61.

6 Page 70 delete the heading that begins  
7 "environmental effect". And on page 70/71 delete  
8 the last two paragraphs of page 70 and the first  
9 two paragraphs of page 71.

10 As we get into this I'd like to take a  
11 few minutes and describe the process that resulted  
12 in us being here today for a special business  
13 meeting.

14 Approximately four years ago on December  
15 21, 2000, El Segundo Power II LLC filed an  
16 application for certification seeking approval  
17 from the California Energy Commission to replace  
18 the existing El Segundo Generating Station Units 1  
19 and 2 with a new 630 megawatt, natural gas-fired,  
20 combined cycle electric generation facility.

21 The El Segundo Power Redevelopment  
22 project is proposed on land currently zoned for a  
23 power plant.

24 On February 7th of 2000 the California  
25 Energy Commission found the AFC to be data

1       adequate, which began staff's analysis of the  
2       project.

3               Extensive coordination occurred with the  
4       numerous local, state and federal agencies.  
5       Energy Commission Staff worked with the Cities of  
6       El Segundo, Manhattan Beach, Los Angeles, Los  
7       Angeles County, the California Independent System  
8       Operator, the South Coast Air Quality Management  
9       District, the California Air Resources Board, the  
10      Federal Aviation Administration, the U.S.  
11      Environmental Protection Agency, the California  
12      Coastal Commission, the U.S. Fish and Wildlife  
13      Service, the National Marine Fisheries Service,  
14      the California Departments of Fish and Game,  
15      Health Services and Parks and Recreation, the U.S.  
16      Army Corps of Engineers, and the Los Angeles  
17      Regional Water Quality Control Board to identify  
18      and resolve issues of concern.

19             In addition, intervenors in the  
20      proceeding included The Utility Workers Union of  
21      America, the City of El Segundo, Ms. Michelle  
22      Murphy, Mr. Robert E. Perkins, the City of  
23      Manhattan Beach, Lyle and Elsie Cripe, Mr. Richard  
24      G. Nicholson, the Santa Monica Baykeeper, Heal The  
25      Bay and other interested residents of the

1 community.

2 The Committee scheduled its initial  
3 public event, an informational hearing and site,  
4 by notice dated February 16, 2001, held at the El  
5 Segundo City Hall in El Segundo. The notice was  
6 sent to all people known or expected to be  
7 interested in the proposed project, including the  
8 owners of land adjacent to or in the near vicinity  
9 of the power plant.

10 It was also published in a local general  
11 circulation newspaper.

12 The Committee, at that time, consisted  
13 of Robert Pernell, as the Presiding Member, and  
14 myself as the Associate Member.

15 This event was held on March 1, 2001.  
16 At the event the Committee and other participants  
17 discussed the proposed power plant, described the  
18 Energy Commission's review process, and explained  
19 opportunities for public participation. The  
20 parties also toured the site of the El Segundo  
21 Power Plant.

22 Over the course of the next several  
23 months Commission Staff held public events to  
24 assess the status of the project including  
25 submission of necessary information by applicant.

1 Staff held publicly noticed workshops between  
2 March 2001 and May 2001 in El Segundo on air  
3 quality, water resource, biological resources,  
4 cultural resources, noise, visual resources,  
5 traffic and transportation and other issues.

6 To aid in expediting the proceeding the  
7 Committee ordered staff to create and publish a  
8 single staff assessment document, rather than the  
9 dual preliminary and final staff assessments.

10 Staff prepared a single staff assessment  
11 and conducted workshops starting in July of 2002  
12 and going through December of 2002 in El Segundo  
13 to discuss findings, proposed mitigation and  
14 proposed compliance monitoring requirements.

15 During approximately 92 hours of  
16 workshops the applicant, intervenors, agencies,  
17 the public and staff discussed the staff analysis  
18 and outstanding issues.

19 The Committee issued an initial  
20 scheduling order 1.0 on June 5, 2002; and then  
21 issued a Committee schedule revision 2.0 on July  
22 22, 2002. A status conference had earlier been  
23 held on November 20, 2001 to determine whether  
24 case development was progressing satisfactorily  
25 and to bring potential schedule delays or other

1 relevant matters to the Committee's attention.

2           Following the November 20, 2001 hearing  
3 on project status, the Committee issued a draft  
4 proposed schedule on November 28, 2001; a proposed  
5 schedule on December 4, 2001; and a Committee  
6 schedule on April 19, 2002. The Committee  
7 schedule 1.0 was then issued on June 5, 2002, and  
8 the Committee's scheduled revision 2.0 was issued  
9 on July 22, 2002.

10           The Committee then held a prehearing  
11 conference on November 7, 2002; the purpose of  
12 which was to assess the parties' readiness for  
13 evidentiary hearings to clarify areas of agreement  
14 or dispute; to identify witnesses and exhibits; to  
15 determine upon which topics desired to cross-  
16 examine witnesses from other parties; and to  
17 discuss procedures which will assist the Committee  
18 in concluding this licensing process in as timely  
19 a manner as feasible.

20           The Committee scheduled and conducted  
21 evidentiary hearings in El Segundo on February  
22 18th, 19th and 20, 2003. At these publicly  
23 noticed hearings all parties were afforded the  
24 opportunity to present evidence, cross-examine  
25 witnesses and to rebut the testimony of other

1 parties, thereby creating an evidentiary record  
2 which forms the basis for the Commission decision.

3 The hearings before the Committee also  
4 allowed all parties to argue their positions on  
5 disputed matters and provided a forum for the  
6 Committee to receive comments from the public and  
7 other governmental agencies.

8 After reviewing the evidentiary record  
9 the Committee, which now consisted of myself,  
10 Chairman Keese, published its presiding decision  
11 on January 30, 2004.

12 A public conference was held on February  
13 23, 2004 in El Segundo to receive oral arguments  
14 on the PMPD.

15 By April of 2004 Commissioner Boyd had  
16 been added to the Committee as the Associate  
17 Member, while I continued as the Presiding Member.  
18 The Committee issued a revised PMPD on April 16,  
19 2004.

20 Then on April 29, 2004 the Committee  
21 held a conference to take oral comments on the  
22 revised PMPD.

23 On Monday, September 20, 2004, the  
24 Committee held a workshop whose purpose was to  
25 advance the proceeding as expeditiously as

1 possible, and to bring a proposed decision to the  
2 full Commission for consideration.

3 After considering all comments, the  
4 Committee issued a second revised Presiding  
5 Member's Proposed Decision on the El Segundo  
6 Redevelopment Project on November 23, 2004. You  
7 have that in front of you.

8 Commissioner Boyd.

9 COMMISSIONER BOYD: Thank you, Chairman  
10 Keese. I wanted to touch upon some of the key  
11 elements in our latest revised PMPD. Perhaps the  
12 most significant issue that has been before us is  
13 that of the aquatic biology.

14 Since the proposed plant, and I might  
15 add also the existing plant, will use once-through  
16 cooling there have been questions throughout the  
17 process as to whether there are significant  
18 impacts due to possible impingement and  
19 entrainment from intake systems.

20 The cooling system, consists of two  
21 intakes, is permitted by the L.A. Regional Water  
22 Quality Control Board to utilize up to 605.6  
23 million gallons of seawater per day. New USEPA  
24 phase II regulations under section 316(b) of the  
25 Federal Clean Water Act may result in required

1 changes to the system, including possible  
2 reductions in maximum allowed flows per day.

3 The proposed decision includes a flow  
4 cap that would restrict flows in the cooling  
5 system to recent historical averages plus a three-  
6 month seasonal flow cap. Therefore, the facility,  
7 in our opinion, would not cause a physical change  
8 to the existing environmental setting, and thus  
9 would not significantly impact biological  
10 resources through the operation of the ocean  
11 cooling system.

12 In addition, in conformance with the new  
13 USEPA regulations the project's entrainment  
14 impacts must be reduced by at least 60 percent,  
15 and impingement impacts by at least 80 percent or  
16 the project must achieve alternative compliance  
17 options under the regulations.

18 Further, the project meets the  
19 objectives of the California Coastal Act to  
20 maintain, enhance, and where feasible, restore the  
21 marine environment. The project will maintain the  
22 existing environmental setting and help to restore  
23 and enhance the Santa Monica Bay by providing that  
24 the Santa Monica Bay Restoration Commission assess  
25 the ecological conditions of the Santa Monica Bay

1 and recommend actions needed to improve the  
2 ecological health of the Bay through provision of  
3 \$5 million to the Commission.

4 Mr. Chairman, this feature the decision,  
5 the provision of moneys to the Santa Monica Bay  
6 Restoration Commission deserves more discussion  
7 and description.

8 We have previously issued approvals for  
9 two other coastal plants, most recently Morro Bay,  
10 and before that, Moss Landing. In those cases the  
11 facilities were located on small estuary type  
12 bays. El Segundo is located on the Santa Monica  
13 Bay, a very large body of water which is estimated  
14 to contain approximately 14.5 trillion gallons of  
15 water.

16 Santa Monica Bay also is home to a  
17 number of many other industrial users in addition  
18 to the El Segundo Plant. Many of these users are  
19 also subject to the L.A. Regional Water Quality  
20 Control Board's NPDES permit process.

21 While the Committee has found that El  
22 Segundo's repowering proposal will not  
23 significantly impact biological resources, we do  
24 have a concern for the overall health of Santa  
25 Monica Bay. What is needed is a broad and

1 comprehensive study conducted on the overall Bay,  
2 not just the single point source of the El Segundo  
3 Plant intakes.

4 With the results of such a study the  
5 L.A. Regional Board can utilize it for their  
6 upcoming re-permitting applications for all of its  
7 industrial users. What we needed and what is  
8 needed is a technically capable organization that  
9 could undertake such a study. The Santa Monica  
10 Bay Restoration Commission, which testified at our  
11 hearings, appears to be the ideal organization for  
12 these purposes.

13 The Restoration Commission began as a  
14 project by the State of California and the USEPA  
15 to develop plans for the health of Santa Monica  
16 Bay and its watershed. Later on it became an  
17 independent state organization and was given the  
18 full name as we know it by today. The Restoration  
19 Commission continues the work on Santa Monica Bay  
20 restoration activities such as pollution  
21 prevention and habitat restoration; promoting  
22 research and technology; and building  
23 comprehensive monitoring programs, as well as  
24 raising public awareness about Santa Monica Bay.

25 The Restoration Commission is not only

1 ideal, due to its experience in dealing with Santa  
2 Monica Bay, but also for their representation on  
3 its governing board. For example, members include  
4 the State of California Secretary for EPA, and the  
5 Secretary for Resources. And for state agencies  
6 there's a member from the Coastal Commission and  
7 another from the L.A. Regional Water Quality  
8 Control Board, another from the Fish and Game and  
9 so forth.

10 At the local level there are members  
11 from the County of Los Angeles, the City of Los  
12 Angeles, South Bay Cities, the Sanitation  
13 District, the County Department of Beaches and  
14 Harbors, again, to name a few.

15 The Restoration Commission has ex  
16 officio members representing the 23rd and 28th  
17 Senate Districts, the 41st and 53rd Assembly  
18 Districts, and there are members of the public at  
19 large who are going to be on the governing board.

20 Clearly, key stakeholder groups that  
21 have deep concern for the health of Santa Monica  
22 Bay will not only guide this study to be conducted  
23 by the Restoration Commission, those same groups  
24 will benefit from the results of the studies for  
25 future efforts.

1 I also want to address the \$5 million  
2 amount related to the Restoration Commission  
3 studies. In February 2002 the applicant offered  
4 \$1 million to the Restoration Commission to  
5 conduct studies on the Santa Monica Bay habitat.

6 Our decision and recommendation to this  
7 Commission recognizes the stated value of such  
8 studies, stated in testimony received over the  
9 years. What we were very concerned about was that  
10 these studies should be high quality. We are  
11 concerned as to whether \$1 million might be  
12 enough. We did not want the studies to be  
13 curtailed due to lack of funds.

14 Accordingly, we recommended providing  
15 that the applicant put \$5 million in trust for the  
16 Restoration Commission. What was driving the \$5  
17 million amount is not, as has been stated by some,  
18 the maximum sacrifice the applicant would make or  
19 suffer in order to get a decision. Rather we  
20 desired to minimize obstacles to producing a high  
21 quality, comprehensive, Bay-wide study by making  
22 sure that the Restoration Commission would have  
23 adequate funds.

24 That's my comments, Mr. Chairman.

25 CHAIRMAN KEESE: Thank you. And before

1 we go to the parties, let me just attempt to  
2 clarify something about these fundings, because in  
3 the filings and other comments that we've seen, we  
4 believe there's been a mischaracterization here.

5 At the front end the applicant offered  
6 to contribute \$1 million to the Restoration  
7 Commission. The applicant then offered, and it  
8 was on the record, \$7 million, the residual amount  
9 of which could go to the Restoration Commission,  
10 after permitting, engineering, material  
11 procurement, construction, consultants or any  
12 other costs related to implementing the phase II  
13 316(b) regulation standards of the Regional Water  
14 Board.

15 The Committee felt that it was important  
16 that we get a study started promptly for the  
17 benefits that we have detailed in our decision.  
18 There may have been money, there may have been  
19 something left out of that 7.5 million when all  
20 the permitting, engineering, material procurement,  
21 construction, consultants were done with the  
22 316(b) study some time in the future. We wanted  
23 to see the money available to the Commission to  
24 start now.

25 With that, applicant, comments?

1           MR. MCKINSEY: Thank you, Chairman  
2           Keese, Commissioners. I guess I should begin by  
3           thanking you for being willing to be here two days  
4           before Christmas and take the time to hopefully  
5           finish this project.

6           CHAIRMAN KEESE: We thank all of you for  
7           doing it, too.

8           MR. MCKINSEY: And I think most of you  
9           know who I am. I've spoken before all of you. My  
10          name is John McKinsey; I represent the applicant,  
11          El Segundo Power II LLC. To my right is Mr. David  
12          Lloyd, and he's an officer of the entity, the  
13          applicant, El Segundo Power II LLC.

14          And you accurately indicated that it's  
15          been four long years that's brought us to this  
16          point. Those four years have been spent in the  
17          process of permitting a repowering of an existing  
18          facility that operates within the compliance of  
19          all the applicable laws and regulations.

20          We would be remiss if we spent this  
21          entire period mostly focusing on biology, to  
22          recognize that over these four years we've reached  
23          agreement with almost every party on every other  
24          issue area. And that is why we have complete  
25          harmony in a lot of areas that are otherwise often

1 contentious, traffic, visual, air, land use.

2 The only remaining contested issue is  
3 biology. And I'm going to use a harsh word here,  
4 but it needs to be said. The fact that you have  
5 to deal with biology today is actually ridiculous.  
6 And we have patiently been working on this process  
7 for four years, but the simple facts remain, and I  
8 think for the benefit of the Commissioners who  
9 haven't participated in this process for four  
10 years, the simple fact remains that this is an  
11 existing operating facility that will make use of  
12 an existing operating cooling system. A cooling  
13 system that has been operating for 40 years, and  
14 that is fully permitted, where a Water Board does  
15 not require any new permitting processes, or any  
16 new permits, or any studies whatsoever to conduct  
17 this project.

18 In that context, this project makes use  
19 of that cooling system without changing it,  
20 without expanding it beyond its permitted and  
21 authorized and considered safe and acceptable  
22 levels of operation.

23 The discussion that we have had over the  
24 past four years with the Commission Staff, with  
25 Coastal Commission Staff and with employees of

1 several other agencies has consistently shown us  
2 that the study issue and the issue of marine  
3 biology has not been driven by a factual,  
4 objective, scientific basis. It's been driven by  
5 what I would say is either a misunderstanding or  
6 an initial problem, an initial disagreement that  
7 occurred through, frankly, a miscommunication that  
8 should never have occurred.

9 And that that has been driving a  
10 tremendous amount of the time and the activity  
11 that we have spent.

12 We came to the Energy Commission four  
13 and a half years ago to a series of meeting as we  
14 were preparing this project. One of those  
15 meetings wa a meeting with the biologists at the  
16 Energy Commission regarding marine biology. I was  
17 at that meeting.

18 And at that meeting we explained the  
19 situation where the Water Board was not going to  
20 require us to conduct additional studies, where we  
21 were in a setting that had a tremendous amount of  
22 information and studies conducted on the setting,  
23 and they agreed, we didn't need to conduct a  
24 study.

25 We submitted our AFC. The Energy

1 Commission had hired outside consultant  
2 biologists. And they decided they wanted a study.  
3 And they indicated that. And that was the point  
4 where suddenly there became a study issue.

5 Over the course of the four years we  
6 have negotiated in good faith, and we have worked  
7 very hard, as has all the parties involved, to  
8 attempt to resolve that difference of opinion and  
9 that issue. In particular, we conducted and  
10 completed a study of our own. We have offered up  
11 a tremendous number of very significant  
12 concessions, not just in the biology area, the  
13 ones we're focusing on today, but in a lot of  
14 other issue areas, as well. Many of those have  
15 added costs and commitments to this project.

16 But nevertheless, in pursuing this one  
17 of the things that's been frustrating is we have  
18 felt that particularly Energy Commission Staff has  
19 never given one inch on this issue. Even though  
20 we have come a long way and put a lot of things  
21 onto the table.

22 So, if you read between the lines of our  
23 comments of some frustration that marine biology  
24 continues to be an issue, it's because we're  
25 actually frustrated that you have to continue to

1 grapple with this issue and try to resolve it.

2 But let me be very clear, and this is  
3 something that I want to make sure all the  
4 Commissioners understand, there is substantial  
5 evidence in the record that shows that El Segundo  
6 Generating Station, the existing operating  
7 facility, and its cooling systems have never had,  
8 do not have, nor will they ever have a significant  
9 adverse effect on the environment.

10 And this project will not modify those  
11 systems. There is the original 316(b) study, the  
12 Scattergood, the immediately adjacent facility  
13 operated by Los Angeles District of Water and  
14 Power study, the Scattergood 316(b) update study.  
15 All of those studies were reviewed and approved by  
16 the Water Board and involved the participation of  
17 many other agencies of which we've heard there are  
18 employees from those agencies that have feelings  
19 of a need for a study now, when it concerns over  
20 the operation of the plant.

21 And we conducted our own study using  
22 King Harbor data in an effort to try to provide a  
23 study to satisfy the thirst and the demand of the  
24 staff for a study, to no avail.

25 It's no coincidence that these studies,

1 all of them, reached similar conclusions that the  
2 entrainment effects of El Segundo Generating  
3 Station are orders of magnitude below  
4 significance. Consistency, multiple studies,  
5 agency involvement all finding orders of magnitude  
6 below the level of significance.

7 This is not a situation where you have a  
8 new cooling system and you're wondering about the  
9 effects it's going to have on the environment.

10 This is not a situation where the cooling system  
11 is located in, as you indicated, in an enclosed  
12 embayment, a small volume of water, a highly  
13 productive, biologically speaking, body of water.  
14 Not only is it a large and vast body of water, but  
15 it's actually not really a bay.

16 It's a moving body of water with  
17 exchanging going on continuously from the north to  
18 the south. The density of larvae in the Santa  
19 Monica Bay area is well understood and it is very  
20 light; it is very thin. And that's one of the  
21 reasons that this facility does not have a  
22 significant adverse effect.

23 the numbers sound daunting. The system  
24 sounds big if you say that the El Segundo  
25 Generating Station, as a whole, can take in 600

1 million gallons a day. But when compared to this  
2 huge body of water, it begins to look minuscule  
3 and trivial. And, in fact, those studies confirm  
4 that.

5 There is no testimony, and there is no  
6 evidence that indicates that these studies are  
7 invalid. That these studies are somehow wrong.  
8 And thus, it is a very large misnomer to think  
9 that there is some risk or some concern that if  
10 you permit this facility without the flow cap that  
11 it's going to harm the marine environment. That  
12 is not the case.

13 We are very happy to be here at this  
14 point where you have before you a decision on this  
15 project. And yet, and as you've caught in our  
16 comments, this new decision has thrown us a few  
17 curves. And three of which are pills that the  
18 applicant cannot possibly swallow, despite its  
19 desire to finish this process, despite its desire  
20 to get on with the contracting and the financing  
21 and the construction and the operation of this  
22 plant.

23 And it's those three changes that I need  
24 to articulate and perhaps further justify, though  
25 our written comments do them substantial justice.

1 And I heard in your opening remarks some language  
2 and indication that at least on some of them we  
3 may already have that resolved.

4 First, the timing of the flow cap. The  
5 timing of the flow cap is critical for us because  
6 in imposing the flow cap immediately upon approval  
7 of --

8 CHAIRMAN KEESE: Let me say that I think  
9 that we've dealt with that one. We thought we had  
10 dealt with it when we took it out of our  
11 conditions. We left inadvertently some language  
12 in the earlier parts of the document. We have  
13 deleted both reference.

14 We, the Committee, recognize that it was  
15 beyond our ability to impose flow caps on the  
16 current plant upon licensure. So that is no  
17 longer in the decision. If that -- Mr. McKinsey,  
18 is --

19 MR. MCKINSEY: Chairman Keese, I'm  
20 concerned because the condition reads very  
21 straightforward one way or another, applicant  
22 shall limit flow. It doesn't indicate that there  
23 is some delay in the implementation of that. And  
24 thus, that condition -- I recognize the language  
25 you've removed from the body, but another change

1       that was made in this new addition was you struck  
2       out an opening phrase in that condition that said  
3       upon commercial operation applicant shall limit  
4       flow.

5               And it is that phrase that we would like  
6       reinserted, because otherwise that condition,  
7       regardless of the removal of the language, still  
8       says applicant shall limit flow period. It  
9       doesn't indicate a delay in the starting point of  
10      that flow cap limit.

11             COMMISSIONER BOYD: If our counsel says  
12      that that's sufficient that's fine by, I believe,  
13      the Committee. As Chairman Keese has indicated,  
14      that was not our intent. It was not our decision.  
15      And it was an oversight in the drafting of the  
16      document, which was brought to our attention  
17      later. Which is why we deemed it just an errata.  
18      It wasn't a change in substance from the decision  
19      that the Committee had intended or had made,  
20      frankly.

21             MR. CHAMBERLAIN: I believe, based on  
22      the discussion here today it's very clear what the  
23      Commission intends. And so you could add that  
24      phrase or you could not add the phrase and it  
25      would have the same effect.

1 COMMISSIONER BOYD: We can take that  
2 under submission, I guess.

3 CHAIRMAN KEESE: Let's hold it for a  
4 second.

5 MR. McKINSEY: When I finish my comments  
6 I'm going to read specifically our proposed  
7 changes in the record, and it is our hope that  
8 you'll be able to take those on and adopt them  
9 today.

10 CHAIRMAN KEESE: Okay, let's go with  
11 number two.

12 MR. McKINSEY: Our second issue has to  
13 do with another change that was made to biology-3,  
14 the condition of certification imposing the flow  
15 cap. And that change removed language that  
16 recognized our right to come back to the Energy  
17 Commission when we've completed the implementation  
18 of 316(b) phase II regulations.

19 We have never intended the flow cap to  
20 be a permanent limit on the operation of this  
21 facility. We proposed it and intended it as a  
22 stopgap measure to address a specific argument  
23 that the staff raised that we wanted to eliminate  
24 that logically and intellectually speaking, and  
25 the flow cap does so.

1           However, the flow cap will constrain the  
2           operation of this facility in the future when the  
3           new units are online. And if we have completed  
4           the phase II 316(b) regulations, we have completed  
5           any of the studies they've required, we've reduced  
6           entrainment as required by them, we don't want it  
7           to automatically be removed. We've never sought  
8           that.

9           But as the previous versions of the PMPD  
10          stated, we wanted it recognized that we could come  
11          back to the Commission, it was intended that we  
12          would, and propose either lifting or removing the  
13          flow cap as appropriate, given the evidence we  
14          have and the changes we made.

15          And that language was very important to  
16          us. And that's our second tremendous concern,  
17          because it actually could have a significant  
18          adverse effect on our ability to operate III and  
19          IV as demanded in the future.

20          CHAIRMAN KEESE: I guess we'll wait till  
21          the end to hear your specific language. I thought  
22          that we had taken care of that. We have not -- we  
23          did not wish, with our determination that we had  
24          made, that there was no significant impact from  
25          the operation of the plant the way we proposed to

1 license it.

2 We did not want to put in a rigid  
3 ability to increase that amount, which one could  
4 argue, lays it open that there might be a  
5 significant impact. But what the language that we  
6 had thought that we had incorporated in here was  
7 such that if the Regional Water determines there  
8 is no impact, then you through the project  
9 manager, I believe, apply to the Commission and  
10 they look at that issue.

11 And I thought the language was just  
12 short of direct, I mean it was not that you  
13 present that decision by Regional Water and they  
14 will waive it. It was --

15 MR. McKINSEY: Chairman Keese, what we  
16 need, we don't necessarily need that in the  
17 condition. But what we want to understand is that  
18 we have in the record, because this could be five,  
19 eight years from now, and though you've managed to  
20 survive this permitting process, it's a good  
21 chance none of you will be here when we come  
22 forward with these changes.

23 CHAIRMAN KEESE: You got that.

24 MR. McKINSEY: That it's in the record  
25 that it was intended that we would be able to come

1 back and attempt to change this condition when  
2 we've completed that permitting process.

3 CHAIRMAN KEESE: Okay, we'll look at  
4 your specific language. Because, again, I believe  
5 that was the Committee's desire.

6 MR. McKINSEY: Okay. Our third issue  
7 also has to do with much of what Commissioner Boyd  
8 described, which was the changes that were made to  
9 our original proposal to provide \$1 million to the  
10 Santa Monica Bay Restoration Commission so that  
11 they could use that money.

12 And like you, the Committee, concluded,  
13 we concluded they were the right group to  
14 effectively use that money in the ways that it  
15 should be used. We proposed it in that they would  
16 have great flexibility on how to use those funds.  
17 And we did that partly because they were not  
18 involved in this permitting process, and thus we  
19 didn't think we had the ability or the time to  
20 develop exactly how they would use it.

21 But most importantly, we proposed that  
22 it be \$1 million, and we proposed that it be  
23 effective upon commercial operation of the new  
24 facility, which was a much farther out date than  
25 the new requirement which is that we have to pay

1       \$1 million within 180 days of today, essentially.  
2       And it could be the full \$5 million prior to  
3       construction, which is where we have a huge  
4       stumbling block.

5               We've indicated that we've got some  
6       questions about the need for \$5 million to conduct  
7       these studies. And frankly our own experience  
8       indicates that a good number would probably be in  
9       the area of \$2 million. But that information  
10      isn't in the record, and so we recognize the  
11      frustration and the effort to which the Committee  
12      has attempted to grapple with that and address it.

13             But nevertheless, we have a problem with  
14      the magnitude, but that's nowhere near the problem  
15      we have with the timing. And the reason for this  
16      is because this is intended to be folded into  
17      financing.

18             Over the course of the last four years  
19      the applicant has already invested a tremendous  
20      amount of money directly in the purchasing of ERCs  
21      and property, and indirectly in the pursuit of  
22      this permit. And it's not capable or able to  
23      commit to spending additional money prior to  
24      having a contract and financing this project.

25             And specifically I would say that your

1 own regulations give an applicant five years to  
2 start construction on a project. And requiring  
3 the applicant to pay this sum of money,  
4 specifically when as you've acknowledged it is not  
5 mitigation, it is an enhancement that is intended  
6 will be used to do good, and it's asking the  
7 applicant to do good for an entire Bay and take  
8 upon its shoulders something that would benefit  
9 all the other users of the Bay.

10 And nevertheless, with that context,  
11 you're asking them to pay that immediately upon  
12 certification. And what I'm indicating to you is  
13 that is a tremendous problem for us, that we don't  
14 have the ability to do that.

15 And that that is a nonstarter for us in  
16 terms of actually being able to accomplish this  
17 project.

18 CHAIRMAN KEESE: Mr. McKinsey, it's not  
19 the Committee's desire to tie up \$5 million on  
20 licensure. It's the Committee's desire to see  
21 that the Restoration Commission start promptly  
22 with its study work which can inform their future  
23 activities.

24 So, I will speak for the Committee and  
25 let Mr. Boyd jump in, while the Committee is not

1 interested -- it's not our intent to burden you  
2 with \$5 million, it is our intent to see that the  
3 study starts promptly. So if you have any  
4 suggestion that meets -- we're not willing, I  
5 don't believe that we're willing to see what we  
6 felt might happen under the previous \$7 million  
7 number, which is that at the end of a 316(b)  
8 process when we only have whatever is left at that  
9 time we start a study, which could be three, four,  
10 five years down the line.

11 We'd like to start the study now to  
12 inform a broad number of 316(b) studies that will  
13 take place on all the units in Santa Monica Bay.

14 MR. MCKINSEY: Chairman Keese, we  
15 appreciate and respect this intent to start a  
16 study as soon as possible. And, in fact, it flows  
17 similarly to our offering to provide \$1 million to  
18 the Santa Monica Bay Restoration Commission.

19 So I don't think we're on a different  
20 page in terms of wanting to do something for the  
21 health of the Santa Monica Bay. Our problem is  
22 that you're asking us to do something that we're  
23 not legally obligated to do. And thus this is an  
24 enhancement, and it's a benefit that goes far  
25 beyond our role and our effect in the Bay. And

1       it's something that we need to fold into  
2       financing.

3               And I'll say secondly that we don't  
4       expect the Santa Monica Bay Restoration Commission  
5       could spend \$1 million in one year solely in the  
6       pursuit of a study from today if they tried.  If  
7       you just looked at the Huntington Beach proceeding  
8       you would see that it took a tremendous amount of  
9       time which was mostly meetings once a month  
10      between stakeholders to develop a protocol, to  
11      finally say okay, we want to do a study.  Then  
12      they have to decide who's going to do the study;  
13      get bids; and carry it out.

14             And so first of all we feel that the  
15      asking of money at this point in time that close  
16      to certification is not necessary in order to have  
17      that process moving forward.

18             And then secondly, and this is a huge  
19      problem for us, that money is not able to be paid  
20      until we actually have a contract and we have  
21      financed this process.  The specific change that  
22      we had proposed is a concession from what we  
23      originally proposed and what was in the first two  
24      PMPDs, where we indicated we wanted to pay it upon  
25      commercial operation.

1           What we are proposing textually as a  
2       change is within 90 days of the commencement of  
3       construction. It is our intent, as soon as we  
4       have a decision, to engage with the procurement  
5       proceedings that we have worked hard to finally  
6       get opened at the PUC; obtain a contract for this  
7       very much needed megawatts in the Los Angeles load  
8       center, which we're very confident in our ability  
9       to do so; and then finance this project and start  
10      construction.

11           But that could still take us longer than  
12      we want it to take. And this condition would  
13      purport to require us to pay a certain amount of  
14      money within 180 days of today's decision, which  
15      if we then cannot make that payment because we  
16      have not reached that point, we're in violation of  
17      this decision.

18           And so what we're indicating is that's  
19      why this is a significant problem.

20           PRESIDING MEMBER GEESMAN: Mr. Chairman.

21           CHAIRMAN KEESE: Commissioner Geesman.

22           PRESIDING MEMBER GEESMAN: This is the  
23      first time the case has been in front of me,  
24      although I've familiarized myself with the  
25      decision and a fair amount of the record, some of

1       this is new.

2               But I think at the opening I need to  
3       share my perception that at least from my vantage  
4       point the applicant has had within its control a  
5       fair amount of the timing of this proceeding.  And  
6       while I don't want to get into the question of  
7       whether a study should have been done previously  
8       or not, we'll discuss that a little bit later, I  
9       do think strictly from a business standpoint that  
10      in retrospect, and I acknowledge hindsight can be  
11      20/20 -- in retrospect that may have been money  
12      well spent several years ago if it would have  
13      gotten you a license more quickly.

14              I look at the landscape that we face in  
15      terms of California's electricity supply  
16      situation.  I've seen a lot of progress of late.  
17      I note Calpine's conference with security analysts  
18      in November identifying California as their most  
19      important market, and the improvements they've  
20      seen brought about by the new Administration.

21              The Franklin Fund, which is the best  
22      performing utility mutual fund in the market, has  
23      identified the progress made in California and the  
24      increasing investment it has made in California's  
25      utilities to reflect that.

1           General Electric announced several weeks  
2           ago its willingness to take a fair portion of  
3           market risk in moving forward with the plant with  
4           Calpine in southern California.

5           And I think had you spent \$1 million on  
6           the biological study several years ago you might  
7           be in a position to harvest some of the benefit of  
8           the PUC's long-term procurement decision more  
9           immediately than it sounds like you feel you will  
10          be.

11          And I think this discussion needs to be  
12          seen in that context. I don't know what the right  
13          number is, but I do know the timing is now. And I  
14          think that your client has probably been a bit  
15          remiss simply from a business standpoint in not  
16          being willing to take on a little bit more  
17          California risk in comparison to some of your  
18          competitors.

19          I think your competitors may reap the  
20          benefit of having moved forward a little more  
21          boldly than you have.

22                 CHAIRMAN KEESE: I imagine you're going  
23                 to give us specific language at the end, is that  
24                 what you --

25                 MR. MCKINSEY: I am, Commissioners.

1           CHAIRMAN KEESE: I would suggest you  
2       take into consideration our need for moving  
3       forward, and your need for funding and see if you  
4       can --

5           MR. MCKINSEY: I would reiterate again  
6       that I don't think there's any reason why we  
7       should feel compelled to do something that the law  
8       does not require us to do, or sound environmental  
9       policy does not require us to do.

10          There are a tremendous number of issues  
11       that are not referenced in Commissioner Geesman's  
12       summary, including or the fundamental fact that  
13       the agency that's responsible for conducting these  
14       studies is the Regional Water Board.

15          And the Regional Water Board does not  
16       require us to do a study. And any study that  
17       we've done we've wanted to do pursuant to their  
18       direction. And thus otherwise the study would  
19       have been at some cost. Commissioner Geesman is  
20       correct; 20/20 hindsight is often accurate. And  
21       it may have been a wise expenditure, but it is  
22       impossible for us to think that an agency would  
23       require us to do something that the law does not  
24       require us to do. And I don't know how we could  
25       forecast that.

1           Our proposed change to Bio-1 is to  
2     delete the phrase, "180 days after this decision  
3     becomes final" and replace it with the phrase "90  
4     days of start of construction of the new  
5     generating units."

6           Our proposed changes to Bio-3 are to  
7     insert at the beginning of Bio-3, and this is a  
8     replacement of the language in the original, in  
9     the second PMPD, "Upon the commencement of  
10    commercial operation of Units 5, 6 and 7" and then  
11    it would follow "cooling water flows" like the  
12    condition reads.

13           We had proposed a change at the end of  
14    Bio-3 that would have reinserted the language that  
15    was proposed, however I think we have heard from  
16    the Commission and we have it on the record what  
17    is intended, that we be able to return, so I don't  
18    think we need that language reinserted in Bio-3.  
19    And so that's the only change we require in Bio-3.

20           Those are two simple but very vital  
21    changes for us to be able to have a project that  
22    we feel confident we can go out contract, finance,  
23    construct and operate. And we also feel that  
24    those are changes that the law gives us a right to  
25    require.

1           CHAIRMAN KEESE: Thank you. Let's leave  
2 those with the Commission until we hear from the  
3 other parties.

4           PRESIDING MEMBER GEESMAN: Mr. Chairman,  
5 I have a question for counsel.

6           CHAIRMAN KEESE: Yes, Commissioner  
7 Geesman.

8           PRESIDING MEMBER GEESMAN: I wonder if  
9 you would walk us through why you don't believe  
10 that the Coastal Act provisions requiring  
11 restoration and enhancement are legal obligations  
12 that would impose on you a burden directed by us  
13 to perform this study.

14          MR. MCKINSEY: Well, I would raise that  
15 that's a complex legal question that is not  
16 analyzed, has not been briefed or discussed  
17 whatsoever in this proceeding.

18           And there are two critical issues, and  
19 one of them has to do with what is a project  
20 within the coastal zone. And the question would  
21 be, and I think it's a very good one, and we know  
22 exactly what our position on it is, and that is  
23 that we are not making any modifications  
24 whatsoever to the cooling system; we're not re-  
25 permitting it; we're not expanding its capacity or

1 its operation. And therefore there is not a  
2 project that is affecting marine resources under  
3 the definition of the Coastal Act that would  
4 require those enhancements.

5 However, I would also say that there are  
6 enhancements that are being proposed. And then  
7 the question is whether or not the Committee has  
8 completely exhausted that record to satisfy  
9 themselves that they have evaluated what is  
10 feasible, what is an enhancement, and I think the  
11 Committee has concluded that, their proposal, but  
12 also the proposals that they submitted earlier,  
13 all met the requirements of that provision if it  
14 did apply.

15 PRESIDING MEMBER GEESMAN: Well, doesn't  
16 the full Commission have to make a finding that  
17 the license is in conformity with the Coastal Act?

18 MR. McKINSEY: Indeed, the full  
19 Commission has to make a finding that the license  
20 complies with all applicable laws and regulations.  
21 That's correct.

22 PRESIDING MEMBER GEESMAN: And including  
23 the Coastal Act provisions for enhancement and  
24 restoration of these resources.

25 MR. McKINSEY: Well, once again, there

1 are a significant number of Coastal Act  
2 provisions, including a provision that speaks of  
3 marine resources.

4 I'll say again, this is not a new  
5 project; this is not a new facility that's being  
6 permitted. This facility is not affecting below  
7 the water line, the cooling systems, whatsoever.  
8 It's not expanding their capacity or their  
9 behavior.

10 And so I think arguably you have a  
11 choice. You can choose to say, yes, it applies,  
12 and we satisfied it. Or you could choose to say  
13 it does not apply.

14 In this case the Committee has chosen to  
15 say it applies, and it has been satisfied. And is  
16 presenting to the full Commission that very  
17 conclusion, that it applies and it has been fully  
18 satisfied.

19 CHAIRMAN KEESE: Thank you. Is that is,  
20 Mr. McKinsey?

21 Staff.

22 MR. ABELSON: Yes, thank you, Chairman  
23 Keese and Commissioner Boyd and fellow  
24 Commissioners. My name is David Abelson and I'd  
25 like to start by saying it's been truly a great

1 privilege for me, as an attorney here at the  
2 Energy Commission, to represent the Energy  
3 Commission Staff throughout this El Segundo  
4 proceeding.

5 You have had, as part of your biology  
6 team, some of the best biologists in the world.  
7 And they have provided me, as the attorney, with  
8 everything I've needed to give them a fair and  
9 full representation during this proceeding.

10 I've been asked to keep my opening  
11 remarks brief this morning. Those of you that  
12 know me and know that I'm a lawyer, this is a bit  
13 like asking your favorite watchdog to not bark  
14 when the doorbell rings.

15 But I'm going to try to summarize in one  
16 sentence, if I can, basically, what staff's  
17 position is. And I know that you all have  
18 received our written comments. I know that the  
19 Committee, in particular, has heard from us on  
20 several occasions and has listened very carefully  
21 to our viewpoints. And we appreciate that.

22 Our comments for opening argument  
23 purpose this morning would be simply this. That  
24 consistent with staff's views throughout this  
25 proceeding, staff has filed written comments which

1 proposed modifications to the revised proposed  
2 decision to insure conformance with the Coastal  
3 Act, the Warren Alquist Act and the California  
4 Environmental Quality Act.

5 We are available to answer any questions  
6 that the Commission may have about our written  
7 comments. And I would finish by saying that we  
8 completely disagree with the representations that  
9 Mr. McKinsey has put forward on behalf of his  
10 client regarding the impacts of this project.

11 Thank you.

12 CHAIRMAN KEESE: Mr. Abelson, did you  
13 have a comment regarding either of -- the  
14 applicant wound up suggesting two changes -- do  
15 you have a comment on those?

16 MR. ABELSON: Yes. I've just seen those  
17 this morning and I believe that delaying the start  
18 of payment until 90 days following the start of  
19 construction is something that's certainly within  
20 the authority of the Commission to do.

21 But it does not appear that it would  
22 address the Commission's and the Committee's  
23 stated concern to get on with the research at this  
24 time. So, other than that the issue was never  
25 litigated directly and we have no formal position

1 beyond that.

2 With regard to the other issue about the  
3 right to amend the flow caps, if there are future  
4 studies that --

5 CHAIRMAN KEESE: They've withdrawn that  
6 one.

7 MR. ABELSON: Oh, all right. So are we  
8 talking about the timing of the flow cap issues?  
9 You mentioned two things. Is that the other point  
10 you wanted me to address?

11 CHAIRMAN KEESE: Correct, the Committee  
12 had indicated what its intent was on that, and  
13 they asked for some words to be added. Do you  
14 have any objections to that?

15 MR. ABELSON: I don't have a position  
16 officially because we haven't really litigated the  
17 issue. But I do think that the language the  
18 applicant has proposed, I tried to read it  
19 carefully this morning, -- excuse me, I'm focusing  
20 back on the ability to amend --

21 CHAIRMAN KEESE: Isn't it operation of  
22 the --

23 MR. ABELSON: My apologies.

24 CHAIRMAN KEESE: I don't have it in  
25 front of me, but was that operation of the

1 facility? Commercial operation.

2 MR. ABELSON: Yes. If you're asking  
3 does staff have a problem with the flow cap going  
4 in upon commercial operation as opposed to at the  
5 time of licensing, I don't think that we have any  
6 opposition to that.

7 CHAIRMAN KEESE: Thank you. Then just  
8 because we have the two of you here, Mr. McKinsey,  
9 you've seen the staff's suggestion, and I'm  
10 thinking in particular at this moment about air.

11 MR. MCKINSEY: Correct, we have,  
12 Chairman.

13 CHAIRMAN KEESE: Do you have any --

14 MR. MCKINSEY: We have two problems with  
15 it. One, the proposed changes by staff on the  
16 construction air quality conditions on the first  
17 blush didn't look that problematic. However,  
18 they're entirely new, they're revamped, and we  
19 just don't have the ability to say that they're  
20 okay now.

21 CHAIRMAN KEESE: Thank you. I think  
22 it's going to be the Committee's recommendation to  
23 the Commission that since we do not have anything  
24 on the record here, if you and your client  
25 accepted them we would incorporate them. If you

1 don't, then it's a subject that has to come back  
2 and be dealt with in the amendment process.

3 And we're not -- since we recognize it's  
4 not on the record --

5 MR. MCKINSEY: I can also indicate that  
6 there is an incorrect statement in the staff's  
7 thing that they say that the FDOC has been  
8 changed. It still has not been changed. And  
9 thus, there are other changes that the staff seeks  
10 that once it gets changed, we are going to have to  
11 come back and make a change in order to  
12 incorporate. And so clearly that would be a great  
13 time to try accomplish all of these things.

14 CHAIRMAN KEESE: Why don't we just leave  
15 that issue to the amendment process.

16 Thank you.

17 I have then three members of the  
18 audience who wish to testify on this issue. And I  
19 have -- I'm sorry, five members in the audience,  
20 and three on the telephone. Just because it works  
21 out simpler that way, I believe we will take those  
22 in the audience first, and we'll start with Mr.  
23 Luster of the California Coastal Commission.

24 MR. LUSTER: Good morning, Chair Keese  
25 and Commissioners. I'm Tom Luster, representing

1 the California Coastal Commission. Thank you for  
2 this opportunity to speak today. Can you hear me  
3 all right? Yes.

4 Okay. Thanks for the opportunity to  
5 speak today about this proposed project. As you  
6 know from our letter yesterday we have a number of  
7 substantial concerns with this proposed decision.

8 I'll make just a few brief comments  
9 today in three areas, but will be available for  
10 your questions later.

11 First, I'll briefly reiterate the main  
12 points of yesterday's letter. I'll then briefly  
13 respond to some of the applicant's contentions.  
14 And finally I'll reiterate our recommendation  
15 about how to correct the errors in the proposed  
16 decision and make a request for the action you  
17 should take today.

18 Please refer to our letter and the 11  
19 other documents referenced in that letter for a  
20 full and more detailed review of our position over  
21 the course of this proceeding.

22 Our recent letter raises four main  
23 issues of concern related to the proposed  
24 project's adverse impacts to marine biological  
25 resources. Our concerns are related both to the

1 health and functioning of Santa Monica Bay and to  
2 the legal inadequacies of the proposed decision.

3 First, the decision does not properly  
4 address the Warren Alquist Act and the Coast Act  
5 requirements. The proposed decision completely  
6 ignores the Coastal Commission's provision that an  
7 entrainment study be done. The Energy Commission  
8 must either adopt the Coastal Commission's  
9 provisions or find that they are infeasible or  
10 would cause greater adverse environmental harm.

11 With regards to our request for an  
12 entrainment study, the proposed decision is  
13 inappropriately silent. Additionally, the  
14 proposed decision fails to address an issue of  
15 LORS noncompliance, that is the Coast Act requires  
16 that a proposed development maintain, restore, and  
17 where feasible, enhance marine biological  
18 resources. It further requires that enhancement  
19 impacts be -- excuse me, entrainment impacts be  
20 minimized. And through its joint jurisdiction  
21 with section 13142.5 of the Porter Cologne Water  
22 Act, requires studies be completed prior to  
23 development.

24 The Committee's proposed decision does  
25 not include the necessary findings about how its

1 proposed conditions will meet these Coastal Act  
2 requirements, nor does it make the necessary  
3 findings of noncompliance and the subsequently  
4 required override for purposes of public necessity  
5 and convenience.

6 Also the proposed decision improperly  
7 defers a substantial part of the Energy  
8 Commission's duties to the uncertain future  
9 actions of another agency, the Regional Water  
10 Quality Control Board.

11 While we expect the Regional Board will  
12 implement its responsibilities appropriately,  
13 those responsibilities involve an entirely  
14 different set of standards than the ones you're  
15 subject to in this AFC proceeding.

16 This proposed deferral by the Committee  
17 is clearly out of line with your statutory  
18 responsibilities and with applicable judicial  
19 decisions. We further note that the Regional  
20 Board yesterday urged you do not rely on its  
21 future deliberations as part of your decision in  
22 front of you now.

23 The proposed decision also relies on an  
24 environmental baseline that is woefully inadequate  
25 for determining project-related changes to

1 environmental conditions. It is therefore useless  
2 and legally inadequate for purposes of conformity  
3 to CEQA, the Warren Alquist Act or the Coastal  
4 Act.

5 And finally, the Committee has  
6 improperly made up conditions that are supported  
7 by little or no evidence in the record, or are  
8 essentially meaningless for addressing adverse  
9 impacts of the proposed project.

10 The proposed conditions are either  
11 superfluous in that they require the applicant to  
12 comply with requirements the applicant would  
13 already be subject to, namely those that will be  
14 imposed by the Regional Board; or they are  
15 inconsequential in dealing with the effects of the  
16 proposed project on Santa Monica Bay.

17 While it may be helpful to quote,  
18 "assess the ecological condition of Santa Monica  
19 Bay" unquote, as stated in proposed condition Bio-  
20 1, the condition is written with so little  
21 specificity and allows so little oversight by the  
22 Energy Commission that there is no certainty about  
23 what impact is meant to be addressed by the  
24 condition, and what actions would be taken in  
25 response.

1           We know, too, that while we have very  
2       little agreement with the applicant over most of  
3       these issues, we do agree with the applicant's  
4       contention that the Committee has no basis for  
5       some of its findings and conditions.

6           For instance, the selection of \$5  
7       million for use by the Santa Monica Bay  
8       Restoration Commission is completely arbitrary.  
9       At best that amount appears to be wholly  
10      inadequate to address impacts. But due to the  
11      inadequacies of the record, any amount you select  
12      from zero to 50 to 100 million dollars is equally  
13      arbitrary.

14          Again, we've spelled out our primary  
15      concerns in more detail in our letter from  
16      yesterday, as well as in the numerous other  
17      reports and letters we've filed over the past  
18      nearly four years of our involvement in this  
19      review.

20          The key element needed to correct these  
21      errors is an entrainment study that provides a  
22      credible basis to determine project impacts and  
23      the necessary mitigation measures.

24          The applicant describes in its December  
25      21st letter to you that this provision requiring a

1 new entrainment study is whimsical and without  
2 legal basis. In response I can only point to the  
3 Energy Commission's proper application of the law  
4 in previous AFC reviews where a new entrainment  
5 study has been required and its results  
6 incorporated into your final AFC decision.

7 I can also point further to the same  
8 whimsical argument about a need for a new study  
9 being made by each of the other state agencies  
10 involved in this AFC review, including along with  
11 the Coastal Commission, the State Lands  
12 Commission, the Regional Board and the Department  
13 of Fish and Game.

14 This is in addition to your own staff  
15 and to the City of Manhattan Beach and several  
16 other intervenors. We do not consider this study  
17 whimsical. We consider it to be required by law  
18 or else we would not be advising you that it is  
19 needed.

20 The applicant also contends in the  
21 letter, as it has repeatedly throughout this  
22 review, that there is no evidence that the power  
23 plant's cooling system causes harm to the marine  
24 environment. So far, unfortunately your Committee  
25 has bought into this head-in-the-sand approach.

1 The lack of direct data from this power plant is  
2 exactly why we are recommending the study since  
3 the beginning of this review.

4 Without that data you are merely  
5 speculating about the project's effects or its  
6 lack of effects. And you therefore have no basis  
7 to make a determination of either harm or no-harm.  
8 Absent that data your decision would be arbitrary.

9 We can point to several other indirect  
10 but relevant points that may help move away from  
11 the idea that having no study means there can't be  
12 any harm. For example, each of the previous AFCs  
13 for coastal power plants have required entrainment  
14 studies be done; and each has shown substantial  
15 adverse effects to the marine environment. Those  
16 studies have also resulted in mitigation measures  
17 being added to your AFC decisions.

18 We can also point to the years of legal  
19 challenges, research and rulemaking that resulted  
20 in the new entrainment rule at the federal level.  
21 This new rule was promulgated in response to a  
22 court settlement about the significant level of  
23 harm caused by power plants using water from the  
24 ocean and other water bodies for cooling.

25 It's quite frankly ridiculous for the

1 applicant to contend, and for the Committee to  
2 support, the idea that pulling in and killing  
3 every day all the organisms in about one square  
4 mile of ocean water one foot deep does no harm to  
5 Santa Monica Bay.

6 At the very least this consumptive waste  
7 of that level of Santa Monica Bay's productivity  
8 is likely to require mitigation measures, none of  
9 which are provided in the proposed decision.

10 Finally, I'll close with the same  
11 request we made in our letter, that you not  
12 approve this current proposed decision, but  
13 instead direct the Committee to do what it should  
14 have done all along, require the applicant to  
15 complete the necessary entrainment study and then  
16 take the results of that study to establish the  
17 proper environmental baseline and determine the  
18 mitigation measures necessary to insure this  
19 project operates in an environmentally appropriate  
20 and legally supportable manner.

21 Thank you. I'd be happy to answer any  
22 questions you have.

23 CHAIRMAN KEESE: Thank you, Mr. Luster.  
24 And clearly one of the issues that has faced the  
25 Committee during its four years of deliberation

1 has been the jurisdiction of different  
2 governmental entities.

3 You recognize, I'm sure, that this plant  
4 was operating with a brand new 316(b) permit  
5 issued, I believe, in June of 2000 when they filed  
6 in the year 2000.

7 At that time, it didn't seem logical, I  
8 would imagine, for one to say, all right, let's do  
9 another one.

10 Now, I know the old one was criticized.  
11 But there was a current, valid permit less than  
12 six months old when this project started.

13 The Committee has struggled with the  
14 issue of whether a study of Santa Monica Bay or a  
15 study of a point source in Santa Monica Bay was  
16 most appropriate. And we came to a conclusion.

17 We also spent a lot of time on whether  
18 there was an impact. And when we, using our  
19 discretion, after many hearings and many  
20 workshops, decided what the take was, and put a  
21 limit on that take, so that there were no adverse  
22 impacts. Is that where we depart? That we made a  
23 decision, under CEQA, there are no significant  
24 environmental impacts. And you disagree with  
25 that, I guess. And then we break down after that.

1           MR. LUSTER: Well, I guess you raise  
2           probably two levels, or two different types of  
3           disagreement. One, we're not challenging the  
4           Regional Board's determination in 2000 that the  
5           previous study done that applied to this power  
6           plant did not comply with the 316(b) rules at the  
7           federal level. That was the intent of the  
8           Regional Board's decision, and we have no problems  
9           with that.

10           The difficulty is the standards for that  
11           determination are entirely different than the  
12           standards that you're subject to under CEQA,  
13           Warren Alquist Act and Coastal Act.

14           When you apply those standards to this  
15           proposed development in the coastal zone, the  
16           determination by the Regional Board doesn't really  
17           have any bearing.

18           CHAIRMAN KEESE: That's fine, but then  
19           this Committee looked at the take.

20           MR. LUSTER: Um-hum.

21           CHAIRMAN KEESE: And said with the take  
22           that we put in our decision, there will be no  
23           significant environmental impact.

24           MR. LUSTER: And our main concern with  
25           that statement is that there's no basis for it.

1       There's no data that describes the type or number  
2       of organisms that are being pulled in by this  
3       power plant.  There are other nearby studies --

4               CHAIRMAN KEESE:  Even though it's less  
5       than baseline?  In our determination it's less  
6       than baseline.

7               MR. LUSTER:  Well, the difficulty is  
8       baseline under CEQA is not just the amount of  
9       water that's being used.  I think we made a  
10      reference in one of our letters that it's as if  
11      somebody wants to pour a bunch of concrete in a  
12      wetland, you can tell how many yards of concrete  
13      you need, but unless you describe the plants and  
14      animals and the wetland functions, you don't have  
15      a sense of the impact.

16              This is the same thing.  You know how  
17      much water is being used.  But you don't know what  
18      effect pulling in that amount of water has on the  
19      marine biology, which is a key component of CEQA  
20      review.

21              Absent that data you really don't have  
22      an adequate baseline.

23              CHAIRMAN KEESE:  Except it's not as if  
24      it's being done anywhere, it's being done at the  
25      same place that this intake/outlet has been

1 operating since the day this plant opened.

2 MR. LUSTER: And as it is in the record,  
3 there's no entrainment data from this power plant  
4 ever. That may have been good enough for the  
5 Regional Board in its deliberations, but it's  
6 certainly not good enough for the Coastal Act.  
7 And I don't believe it's good enough for CEQA or  
8 Warren Alquist Act compliance.

9 CHAIRMAN KEESE: Thank you.  
10 Commissioner Geesman.

11 PRESIDING MEMBER GEESMAN: I guess I am  
12 a little puzzled here, and I'd like to separate  
13 out the CEQA question. We'll get to the Coastal  
14 Act and Warren Alquist Act issues later, but  
15 separating out the CEQA aspect, it seems to me the  
16 way in which state and federal law allots  
17 jurisdiction over this facility, is that the  
18 Regional Water Quality Control Board has permitted  
19 an existing facility and its operation.

20 We're being asked to permit a new power  
21 plant on that site, but from a legal standpoint  
22 the intake and discharge are an existing facility,  
23 subject to the continuing jurisdiction of the  
24 Regional Water Quality Control Board.

25 As I understand it, the Committee's

1 approach, consistent with our prior practice, has  
2 been to establish a baseline derived from the  
3 water consumption, or the intake over the five  
4 years before the permit application was filed.  
5 That's what we did in Morro Bay; that's what we  
6 did in Moss Landing. That's what I believe  
7 initially our staff recommended be done here.

8 From the Committee's standpoint they've  
9 not increased the amount of water going through  
10 the intake and discharge system at all. And as a  
11 consequence, concluded there's no change in the  
12 environment from this application.

13 What's wrong with that picture? From a  
14 CEQA standpoint.

15 MR. LUSTER: Well, in both Moss Landing  
16 and Morro Bay there was an entrainment study done  
17 under the AFC proceedings. That accompanied the  
18 determination of appropriate baseline waterflow.  
19 And that isn't part of this proceeding, and it  
20 should be.

21 Also, the Regional Board does not have  
22 exclusive jurisdiction over coastal waters in  
23 California. It's shared, the Energy Commission  
24 shares that jurisdiction, as does the Coastal  
25 Committee, Department of Fish and Game, State

1       Lands Commission.

2               So, I'm sorry I don't have the specific  
3       citation for you, but the section of Warren  
4       Alquist Act that provides you exclusive  
5       jurisdiction to power plants greater than 50  
6       megawatts. Had this been a development proposal  
7       for less than 50 megawatts, it would require a  
8       coastal development permit. And the Coastal  
9       Commission would evaluate all aspects of the  
10      proposal including the intake and discharge, along  
11      with the onland portions of this development,  
12      because the entire development is within the  
13      coastal zone.

14             Did that answer your question?

15             PRESIDING MEMBER GEESMAN: No. Because  
16      we're not litigating Morro Bay or Moss Landing,  
17      nor a project under 50 megawatts. What we've got  
18      is an existing permitted facility.

19             I think there are concerns about the  
20      environmental impact of that existing facility. I  
21      believe that from a jurisdictional standpoint that  
22      question is revisited every five years through the  
23      NPDES permit process.

24             But what's in front of us is a license  
25      request for a new power plant that will make use

1 of that existing intake and discharge system. And  
2 I believe the way in which the Committee has  
3 approached it, consistent with our prior practice,  
4 is to establish a numerical baseline based on the  
5 amount of water consumed. And concluded, since  
6 there's been no increase, under the Committee's  
7 recommendation of water going through the intake  
8 and discharge system, that there's no adverse  
9 impact created by the power plant application.

10 You may still have a concern about the  
11 existing facility, but jurisdictionally that issue  
12 is looked at every five years through the NPDES  
13 process.

14 MR. LUSTER: And I guess our main  
15 concern with that is that that's an entirely  
16 different standard that's applied in that the  
17 Regional Board, the NPDES permit process is not  
18 subject to CEQA. It follows the federal rules for  
19 316(b) under the Clean Water Act.

20 And the intent of their review is  
21 primarily looking at best available technology at  
22 an intake and discharge.

23 Under CEQA and the Coastal Act and the  
24 Warren Alquist Act, you're subject to an entirely  
25 different set of standards than was perfectly

1       adequate for those deliberations every five years  
2       by the Regional Board.

3               And the standards that you're concerned  
4       with include the need for determination of the  
5       environmental baseline, as well as the flow  
6       baseline. And I believe this applies regardless  
7       of the flow amount because the flow amount that  
8       you're referring to is that that's set under this  
9       entirely different set of standards by the  
10      Regional Board.

11             PRESIDING MEMBER GEESMAN: But in terms  
12      of mitigation, if there's not been a change in the  
13      environment, you don't have a mitigation  
14      responsibility that flows from that.

15             I acknowledge there's an enhancement and  
16      restoration issue in front of us, and there are  
17      Coastal Act issues in front of us. The Warren  
18      Alquist Act issues in front of us.

19             But I'm having a hard time seeing why  
20      there's a mitigation question flowing from CEQA in  
21      a circumstance where there's been no change to the  
22      existing environment.

23             MR. LUSTER: What is that existing  
24      environment? Other than --

25             PRESIDING MEMBER GEESMAN: The amount of

1 water going through the system.

2 MR. LUSTER: And that's part of it. At  
3 best, that's half of it. The other part is the  
4 environment, itself, the types and numbers or  
5 organisms that are being drawn into the power  
6 plant.

7 And we have no data at all as to whether  
8 the density of those organisms has changed over  
9 the years. If five years ago there was a  
10 different community out there than there is now.  
11 If there are endangered species being drawn into  
12 the power plant.

13 None of that data are available to us.  
14 And so absent that, we really don't know what  
15 environment may or may not be changed near the  
16 intake.

17 PRESIDING MEMBER GEESMAN: Okay.

18 CHAIRMAN KEESE: Are you suggesting that  
19 there was a study five years ago that indicated  
20 what was being taken at that point?

21 MR. LUSTER: No. That's the reference  
22 from the last NPDES permit.

23 CHAIRMAN KEESE: Right. Let me just  
24 make a couple comments. We didn't buy the NPDES  
25 permit level. We adopted a significantly lower

1 level for our CEQA analysis. Commissioner  
2 Geesman, 220 billion gallons a year was the NPDES  
3 number. And I believe that we adopted 126.

4 And just in case anybody else wishes to  
5 make reference to Moss Landing and Morro Bay,  
6 having served on both those Committees, I'm really  
7 lucking out here on coastal activities -- in each  
8 of those cases I believe that we took -- the plant  
9 took in excess of 25 percent of the water in the  
10 estuary every day.

11 There was clearly an impact from those  
12 power plants on the estuary. Now there was some  
13 flushing, much better in Moss Landing than in  
14 Morro Bay. But they were taking a significant  
15 amount.

16 In this case you couldn't say that El  
17 Segundo is taking a significant amount from the  
18 area in which the intake and outfall are. But as  
19 to the whole of Santa Monica Bay, it's a much  
20 different issue.

21 So I really don't think that we should  
22 make analogies between this case and Moss Landing  
23 or Morro Bay. I think we just have to deal with  
24 this case on its own. And that's what the  
25 Committee has attempted to do and has put forward

1 here in the best of faith.

2 MR. LUSTER: May I quickly respond to  
3 that? Again, because there's no entrainment data  
4 we don't know that the near surface Santa Monica  
5 Bay area near this intake has a particular mix of  
6 species or a sensitive species or a seasonal  
7 importance to Santa Monica Bay.

8 Also, just because a project takes up a  
9 small portion of a water body, doesn't excuse it  
10 from CEQA. That's like saying any project in the  
11 State of California that takes up just a small  
12 piece of the state's land shouldn't have  
13 environmental review.

14 CHAIRMAN KEESE: That was not our  
15 decision. Our decision was there were no  
16 significant impacts because it was taking less  
17 than -- we put a limit on to what had been its  
18 historical take.

19 I'm just suggesting that to look at our  
20 decision and say but you did something different  
21 in Morro Bay and Moss Landing is inappropriate.  
22 That was my point.

23 MR. LUSTER: Okay.

24 CHAIRMAN KEESE: Thank you.

25 MR. LUSTER: Thanks.

1           CHAIRMAN KEESE: And we may have more  
2 questions here before -- does anybody?

3           Tracy Egoscue, Santa Monica Baykeeper.

4           MS. EGOSCUE: Good morning, Chairman  
5 Keese and Commissioners. My name is Tracy Egoscue  
6 and I'm the Executive Director of Santa Monica  
7 Baykeeper. This morning I am representing my  
8 organization, as well as Heal The Bay. Both  
9 organizations being intervenors in this  
10 proceeding.

11           With me is Dr. Craig Shuman, Staff  
12 Scientist with Heal The Bay, who will address  
13 scientific issues hopefully after I am finished.

14           I will primarily address the significant  
15 legal issues which continue to plague the  
16 Presiding Member's Proposed Decision. Before I go  
17 into my presentation or my remarks, I wanted to  
18 point out two things.

19           The first was that we did file our brief  
20 yesterday. And I apologize that we didn't get it  
21 to you sooner. It took us a long time to write,  
22 and I hope that you did have the opportunity to  
23 read it.

24           And secondly that I would like to, on  
25 the record, object to the errata being that it is

1 not what I would call a typical errata. Usually  
2 an errata does not have significant issues. It's  
3 typos or other grammatical errors. And when we  
4 were very hastily going through the errata we  
5 realized that there are a lot of significant  
6 changes that have been made. So I wanted to have  
7 that on the record.

8 We have not been involved in this  
9 proceeding to obstruct or stop this project. We  
10 are here because we want this project to properly  
11 comply with the law. And because the laws are  
12 written in a way that affords protection to the  
13 environment, we do not need to go beyond the law  
14 to reach our environmental goals.

15 This is a very unusual dispute for us.  
16 What is unique about this proceeding is how one-  
17 sided it is. Every government agency that has  
18 been consulted about this matter has advised the  
19 Committee to require one basic reasonable step,  
20 and entrainment study. That's every government  
21 agency in addition to the Commission's own staff.

22 The idea is for the Commission to know  
23 what the true impacts are before authorizing this  
24 project. CEQA requires an examination of what a  
25 project's impacts are. And the project must not

1 proceed unless you can avoid or mitigate the  
2 project's negative impacts.

3 The Coastal Act requires an examination  
4 of what a project's impacts are. And the project  
5 must not proceed unless you can maintain, enhance,  
6 and if feasible restore, marine resources.

7 And any normal proceeding we would have  
8 an idea of what the impacts were four years ago,  
9 three years ago. But today instead of finding  
10 ourselves arguing over the amount of funding  
11 devoted to enhancement, restoration, mitigation,  
12 whatever it is that it's referenced to, or the  
13 feasibility of a given alternative, we find  
14 ourselves arguing over the most basic first step,  
15 getting the information in the first place.

16 The Commission has not yet done this.  
17 But the Commission knows how to do this and has  
18 done it. And although you don't want to compare  
19 yourself to the Moss Landing case and the Morro  
20 Bay case, every modern nonemergency coastal power  
21 plant siting case has required that we have the  
22 benefit of a study. And we request that study  
23 again today as we have consistently.

24 Looking over your own precedent, you  
25 will also see that in each of those cases the

1 Commission identified significant adverse  
2 environmental impacts. And the Commission wisely  
3 required mitigation to compensate for these  
4 impacts.

5 Contrary to the applicant's assertions  
6 and also, indeed, the decision, the new 316(b)  
7 regulations do not guarantee that a study will be  
8 performed. And therefore uncertainty will be the  
9 only product if the Commission approves the  
10 current decision.

11 In its latest letter the applicant makes  
12 some rather interesting contentions. The  
13 applicant says their intake is well studied, but  
14 can't point to one single site-specific study that  
15 has ever been done.

16 The applicant says, approve our project  
17 because the energy crisis demands it. But the  
18 Energy Commission Staff and this Commission have  
19 acknowledged that this is not the case.

20 The applicant also says let the Regional  
21 Board supervise our study. But then goes on to  
22 say that this Commission cannot invade the  
23 province of that Board.

24 The applicant also says concerns over an  
25 entrainment study are whimsical at best, and

1       certainly have no legal founding. But this  
2       Commission has required them under the power of  
3       law, and without whimsy for every other modern,  
4       nonemergency coastal power plant certification.

5               Finally, the applicant says, we'll give  
6       you money to help study the Bay. But then says  
7       that you have no power to tell them when to give  
8       it, or to require more of it, if that is something  
9       that is deemed to happen or need to be happening  
10      later on.

11              Well, this is what I think, in closing,  
12      the Commission can do. Withdraw this proposed  
13      decision. Consult with the Coastal Commission  
14      about the contents of a study that would determine  
15      the project's individual and cumulative impacts.  
16      Require that the study be completed and reviewed  
17      by an independent peer group. And fashion  
18      appropriate mitigation measures based directly on  
19      impacts documented in the study, and those impacts  
20      that are on our Bay.

21              Thank you. And I appreciate the time.

22              CHAIRMAN KEESE: Thank you very much.

23      And then we'll hear from Dr. Craig Shuman.

24              DR. SHUMAN: Good morning, Chairman

25      Keese, Members of the Commission. I'm Dr. Craig

1 Shuman; I'm a Staff Scientist with Heal The Bay.  
2 Thank you for the opportunity to comment before  
3 you today at today's hearing.

4 The record clearly states that Santa  
5 Monica Bay is an invaluable natural resource,  
6 highlighted by the fact that it was one of the  
7 first water bodies in the country designated under  
8 the National Estuary Program.

9 Unfortunately despite this designation  
10 the health of Santa Monica Bay is such that it is  
11 listed as an impaired water body. And there have  
12 been substantial documented declines of many  
13 critical marine invertebrate and fish populations  
14 across a wide range of species.

15 Perhaps most disturbing is they found 80  
16 percent decline in zooplankton in Santa Monica Bay  
17 in the southern California bight over the past 50  
18 years. Perhaps that is why the applicant's  
19 attorney, Mr. McKinsey, stated that larval  
20 abundance in the Bay is light.

21 As currently proposed the project would  
22 be allowed to withdraw 126 billion gallons of  
23 water a year from Santa Monica Bay. That is close  
24 to 25 billion gallons more than the current  
25 facility is withdrawing for cooling water

1 purposes.

2 A hundred and twenty-six billion gallons  
3 of water. Enough water to fill the Rose Bowl four  
4 times a day every day for a year. Enough water to  
5 line interstate 5 the 385 miles from Los Angeles  
6 to Sacramento under 22 feet of water.

7 Experts have testified in the record  
8 that the project will have direct adverse impact  
9 to the marine environment resulting in the death  
10 of thousands of fish, billions of fish larvae and  
11 trillions of marine plankton.

12 Despite this no single study has ever  
13 been performed at the project site, ever. The  
14 bioconditions in the second revised Presiding  
15 Member's Proposed Decision egregiously attempt to  
16 replace a thorough study with half-hearted  
17 measures not grounded in sound science.

18 The Bio-1 condition, the \$5 million, I  
19 believe Commissioner Geesman said it best, we do  
20 not know what the right number is. There's no  
21 scientific basis for this dollar value. It is not  
22 fair to the environment, it is not fair to the  
23 applicant, it is not fair to the residents of  
24 California to impose a dollar value without sound  
25 scientific evidence what this dollar value should

1 be.

2 Typical mitigation costs far exceed this  
3 value. In addition, there's no specification as  
4 to how or where these funds will be spent.

5 We also have an issue concerning the  
6 timing of the utilization of these funds. If  
7 these funds are truly set forth to improve the  
8 knowledge of the Bay and help counteract the  
9 detrimental impacts of the project, then the  
10 operational timeline of the proposed project  
11 should not factor into the use of the funds.

12 It is unrealistic to expect that the  
13 SMBRC, the Santa Monica Bay Restoration  
14 Commission, could knowledgeably spend, not  
15 allocate, but spend the funds before the plant is  
16 turned on.

17 The Bio-2 condition, the Gunderboom  
18 feasibility study, is thoroughly documented in the  
19 record that many state agencies, many intervenors  
20 including the U.S. Coast Guard, feel this is not  
21 appropriate for the region, so I'll not belabor  
22 that issue.

23 Moving on to Bio-3, monthly flow caps  
24 and annual flow cap. These are not representative  
25 of existing conditions, as I said before on the

1 annual cap. The monthly caps, which are now  
2 called the seasonal caps, again there's no  
3 scientific justification to determine why they  
4 will have the purported environmental benefit.

5 The only justification we can find is  
6 that these three months seem to uniquely  
7 correspond to the three months of historically low  
8 water withdrawal from the power plant. Contrary  
9 to what is stated in the proposed decision, annual  
10 averaging does not inherently adjust for  
11 seasonality of egg and larval abundances.

12 As currently written, the three monthly  
13 caps will not protect warm water spawners,  
14 specifically the recreational valuable California  
15 halibut.

16 To close, the proposed decision is based  
17 on no reliable science. There's no meaningful  
18 mitigation. And as proposed, this project will  
19 result in an unmitigated adverse impacts to the  
20 Santa Monica Bay.

21 Thank you.

22 CHAIRMAN KEESE: Thank you.

23 PRESIDING MEMBER GEESMAN: Mr. Chairman.

24 CHAIRMAN KEESE: Commissioner Geesman.

25 PRESIDING MEMBER GEESMAN: Did your

1 organization take a position on the staff-proposed  
2 wastewater cooling option?

3 DR. SHUMAN: We do feel that that is a  
4 very viable option. We have reviewed the routine  
5 dismissal of it in the PMPD, and feel that this  
6 alternative was not adequately evaluated. It  
7 could be a very easy solution and would eliminate  
8 all impacts of impingement and entrainment related  
9 to the plant.

10 We feel that there should be a sound  
11 scientific study to determine the feasibility of  
12 this alternative. We have the volume of water.  
13 It's right there. This could be a very easy fix.

14 PRESIDING MEMBER GEESMAN: Am I wrong to  
15 be troubled by the thermal discharge that would be  
16 involved? I think that the Committee report  
17 speaks of as much as 105 degrees Fahrenheit, and  
18 potentially in a worst case, I think it's 123  
19 degrees?

20 DR. SHUMAN: It would definitely warrant  
21 further analysis.

22 PRESIDING MEMBER GEESMAN: I guess --  
23 well, let me ask it a little different way. If  
24 you had finite resources, call them a million  
25 dollars, call them 5 million dollars, to do a

1 study, is that money best spent focused on this  
2 particular individual discharge system, and made  
3 part of a 316(b) review process? Or is it better  
4 spent on a more comprehensive evaluation of the  
5 overall ecosystem in the Bay?

6 DR. SHUMAN: This project needs a site-  
7 specific study so we can determine what the  
8 impacts of this project would be --

9 PRESIDING MEMBER GEESMAN: Yeah, that  
10 wasn't my question. Assume that some regulator is  
11 going to, at some point, say this needs a site-  
12 specific study. I'm gifting your organization  
13 with either a million dollars or 5 million  
14 dollars, or somewhere in between, and asking you  
15 to tell me what would be a scientifically better  
16 way to expend those funds.

17 DR. SHUMAN: I don't think there's a  
18 scientifically better way. I think both are  
19 equally important.

20 PRESIDING MEMBER GEESMAN: Thank you.

21 CHAIRMAN KEESE: Thank you. Mr.  
22 Raftican.

23 MR. RAFTICAN: Mr. Chairman and Members  
24 of the Commission, thank you for the opportunity  
25 to speak. I will be brief. My name's Tom

1       Raftican, President of the United Anglers of  
2       Southern California. We represent some 50,000  
3       affiliated members and really are kind of a direct  
4       conduit to the half a million marine anglers in  
5       southern California.

6               Recent changes in rockfish populations  
7       really have had a dramatic effect in the way that  
8       anglers fish and the amount of time that we're  
9       allowed on the water. In particular, boccaccio,  
10      one species, the fluctuation of the population as  
11      it goes down, just a small fluctuation has taken  
12      recreational rockfishing anglers off the water  
13      anywhere from four months a year to eight months a  
14      year.

15              We also have been pushed into very  
16      different waters and different depth areas because  
17      of these changes in the populations.

18              These changes, the changes that we face,  
19      the changes that recreational anglers face are  
20      really the result of very small changes in this  
21      population of one particular fish. And if you  
22      take any one particular species, small changes can  
23      have a dramatic effect. I mean literally taking  
24      all recreational rockfishing anglers off the  
25      water. And this is up and down the state.

1           We're deeply concerned about some of  
2       these changes. And after discussions with a  
3       number of groups, people that were up here before,  
4       Heal The Bay and the Santa Monica Baykeeper, we'd  
5       like to state our deep concern about the  
6       impingement and entrainment of fish populations,  
7       and in particular the at-risk fish populations.

8           We believe this is an area where study  
9       is definitely warranted. And we would like to  
10      support Heal The Bay and the Santa Monica  
11      Baykeeper in their efforts.

12           Thank you very much.

13           CHAIRMAN KEESE: Thank you. Is there  
14      anybody else in the audience that I missed here?  
15      Yes, come forward, please. We'll come to the  
16      phone as soon as we're --

17           MR. HANSEN: Yes, I'm James Hansen,  
18      Economic Development Director of the City of El  
19      Segundo. Actually I submitted my name, but I  
20      don't know --

21           CHAIRMAN KEESE: Well, it didn't get  
22      here, so --

23           MR. HANSEN: Well, good morning,  
24      Chairman Keese and Members of the Commission.  
25      Again, my comments will be brief.

1 I wanted to first note that Councilman  
2 John Gaines sends his regrets on being unable to  
3 speak to you this morning.

4 On behalf of the City of El Segundo I'd  
5 like to reiterate our support for this project.  
6 We've supported repowering the plant from the very  
7 beginning. And most importantly, we would like to  
8 see the plant in full operation as soon as  
9 possible, to help meet the power needs of the  
10 region.

11 And in the interim we'd like to see the  
12 current plan to operate at levels experienced more  
13 in the 2002/2003 time period, given that it's a  
14 vital source of revenue to the City of El Segundo.

15 Thank you.

16 CHAIRMAN KEESE: Thank you.

17 MR. EISON: Bill Eison. These comments  
18 are on behalf of myself and a group in Manhattan  
19 Beach called Residents for a Quality City.

20 Since the El Segundo Power Generating  
21 Station was built there has been a steady decline  
22 in the fishery off of Manhattan Beach. We used to  
23 hear the excited yells of kids fishing on the  
24 Manhattan Beach Pier located about a mile and a  
25 half south of the El Segundo Generation Station

1       when they hooked up with their first fish. No  
2       more.

3               The roundhouse at the end of the pier  
4       was constructed as a bait station. But now  
5       there's no fish to catch, so the roundhouse has  
6       been converted to other uses.

7               The preface to the 1972 Coastal Act,  
8       passed by popular initiative, reads: That in  
9       order to -- quote, "That in order to protect  
10      wildlife, marine fishers and other ocean  
11      resources, and the natural environment, it is  
12      necessary to preserve the ecological balance of  
13      the coastal zone and prevent its further  
14      deterioration and destruction. That it is a  
15      policy of the state to preserve, protect and,  
16      where possible, to restore the resources of the  
17      coastal zone for the enjoyment of the current and  
18      succeeding generations."

19              Yes, electricity is important. But so  
20      is the marine habitat off our coast. As part of  
21      the environmental review, the Energy Commission is  
22      charged with a determination of baseline  
23      environmental conditions at the beginning of the  
24      project.

25              This baseline cannot be determined

1 without conducting a 316(b) type study in the  
2 vicinity of the El Segundo Generating Station.  
3 Yes, the El Segundo Generation is located at the  
4 southern end of the Santa Monica Bay. And, yes,  
5 Santa Monica Bay is part of the Pacific Ocean,  
6 which is connected to and is part of the oceans of  
7 the world. But this does not obviate the need for  
8 a site-specific section 316(b) type study.

9 Environmental regulations require that  
10 the baseline environmental conditions, including  
11 in this case a section 316(b) type study, be  
12 concluded prior to the conclusion of the  
13 environmental review.

14 Although the flow data is part of the  
15 environment, it is only considered part of the  
16 environment because of its effect on the marine  
17 ecology. It is a state of the marine ecology that  
18 is the physical environment.

19 Although the courts have found that the  
20 historical flow rate of withdrawing water from a  
21 limited body of drinking water is a baseline  
22 condition, that is not the case here. Here it is  
23 the condition of the marine habitat, not the flow  
24 rate, that is the main baseline condition.

25 Over time the marine ecology, or marine

1 habitat, in the vicinity of the project has  
2 changed. So it's not the flow rate, it is the  
3 marine habitat that is important here.

4 The applicant contends that there is  
5 substantial evidence in the record that the El  
6 Segundo Generating Station has and will have no  
7 effect on marine resources. This is patently  
8 false. To the contrary, qualified biologists,  
9 whose testimony is part of the record, contend  
10 that the El Segundo Generating Station, by  
11 withdrawing millions of gallons of seawater for  
12 ocean cooling, destroys billions of plankton and  
13 fish larvae, and this does, in fact, affect the  
14 marine ecology in the vicinity of the El Segundo  
15 Generating Station.

16 The Warren Alquist Act does give the  
17 Coastal Commission a very limited jurisdiction  
18 over energy, quote-unquote, projects in the  
19 coastal zone. The Coastal Act defines a project  
20 as being any physical change, even a temporary  
21 change, in the vicinity of the coastal zone.

22 The applicant's contention that because  
23 it proposes no change in the design capacity of  
24 the ocean intakes and outfalls of the project is  
25 somehow not a project under the Coastal Act is

1 ridiculous.

2 The Coastal Commission, within its  
3 limited jurisdiction, is simply requiring a  
4 section 316(b) type impingement and entrainment  
5 mortality study, which will take about a year and  
6 cost about a million dollars, as part of the  
7 certification process.

8 We think that this requirement is  
9 eminently reasonable, and we urge you to heed the  
10 Coastal Commission's requirements.

11 Thank you.

12 CHAIRMAN KEESE: Thank you. And I did  
13 have your card up here, Mr. Eison. I'm sorry, I  
14 just misplaced it. Thank you.

15 We will go to the phone then, Mr. Jim  
16 Spphoonmaker.

17 MR. SPOONMAKER: -- Commissioner, I  
18 have no comment. I would respond to questions  
19 posed by staff.

20 CHAIRMAN KEESE: Okay. Thank you.

21 Michelle Murphy.

22 MS. MURPHY: Yes, I have some comments.  
23 I'm sort of appalled by these four years of  
24 proceedings. We began thinking we could trust our  
25 government, and I'm doubting that. It seems to me

1 blind justice is one thing, but deciding that  
2 you're going to do something for the next 50 years  
3 without looking into any of the effects in turning  
4 a blind ear to all of the experts that have talked  
5 about it, is (inaudible).

6           You've talked about Morro Bay. This  
7 could be conceivably worse than Morro Bay. We  
8 don't know, of course, because there's been no  
9 study done. But this is not maybe as sensitive or  
10 small a place, but this is the densest county in  
11 the United States. And there are 10 million  
12 people that use this Bay as our playground and our  
13 sewer. And until we know the effects of what  
14 could be the straw that breaks the camel's back,  
15 we cannot know what's going to happen when you  
16 permit this plant to be built.

17           I also -- I guess it's a legal thing,  
18 and we're not supposed to talk about what's really  
19 happening, but there has been no intake for the  
20 last at least year, is it a year or two years?  
21 I'm not clear. But actually hasn't been taking  
22 anything in.

23           Now perhaps there's something wrong with  
24 the process here because couldn't somebody have  
25 been studying the effects of no intake to see

1       what's happened to the Bay? Is it recovering?  
2       What's happening? This is the kind of thing  
3       scientists should have been looking at. And I  
4       don't know why we haven't been doing it. Instead  
5       we've been having this proceeding for four years.

6               The reason there was no study done  
7       before the applicant began was that four years ago  
8       the applicant, among other power companies, robbed  
9       Californians of billions of dollars by creating a  
10      fake energy crisis. Therefore there was an urgent  
11      need for energy; therefore the Energy Commission  
12      said, oh, you and Huntington Beach can come in  
13      without doing the study that you should do, of  
14      course, because we want to know what happens to  
15      the ocean when you use its resources.

16             So, now four years later you're letting  
17      them rob Californians again by robbing us of the  
18      health of the ocean.

19             All the experts have spoken to you,  
20      when I've been to most of the hearings and heard  
21      most of them, have told you that this is  
22      outrageous. There are probably really bad effects  
23      that are going to happen, and we have no idea what  
24      the effects are because we've done no studies.

25             The only expert was the one paid for by

1 the applicant who said there were plenty of fish  
2 in the sea. If that's your factual basis for  
3 deciding that there is no impact, that's a pretty  
4 (inaudible) one, if you ask me.

5 Worried about doing a bay-wide study as  
6 opposed to a point-source study, well, whichever  
7 one you think is the better thing, you got to do  
8 it before you build the thing. If you build the  
9 thing and discover that, whoops, it just killed  
10 all the fish in the Bay, then it's too late. And  
11 you should, before you let the horse out of the  
12 barn, you need to one.

13 Now, my husband, Bob Perkins, another  
14 intervenor, would like to add a few words.

15 MR. PERKINS: Since we're appearing by  
16 phone, I'd like to make sure that we can be heard.  
17 Can the Commission hear us?

18 CHAIRMAN KEESE: Yes, we can.

19 MR. PERKINS: All right. Thank you.

20 CHAIRMAN KEESE: And we did receive your  
21 written -- or your email filing this morning --

22 MR. PERKINS: Thank you.

23 CHAIRMAN KEESE: -- about 8:30, 8:45.

24 MR. PERKINS: I didn't give you much  
25 time to study it, but it was short, thank

1 goodness.

2 Others have said with more precision and  
3 eloquence than I can, what I think are the most  
4 important problems with your proposed decision.  
5 And that is that you actually haven't and cannot  
6 determine that there is no impact, or the amount  
7 of the impact that there will be on the record  
8 before you.

9 Indeed, I heard the Commissioners, and I  
10 apologize that I didn't write down who was  
11 speaking at the time, comment that something might  
12 happen later, and I quote, "if the Regional Water  
13 Board determines there's no impact after its  
14 study."

15 That's because, I mean you recognize  
16 that it's possible that they will find an impact,  
17 it's possible they won't. It's also possible the  
18 five-million dollar study that's proposed will  
19 find an impact, it's possible it won't. But, the  
20 horse will be long out of the barn, it's too late.

21 You need to require facts to be brought  
22 to bear so that a real determination of the impact  
23 and the nature of it can be made and appropriate  
24 mitigation required.

25 The applicant admits that there is no

1 mitigation required of it in the present proposed  
2 decision. In fact, I heard Mr. McKinsey comment  
3 specifically that the \$5 million is not mitigation  
4 money. Of course it isn't, because the findings  
5 haven't been made, that is the facts haven't been  
6 assembled so the findings could be made  
7 appropriately.

8 Finally, I'd like to comment on a -- I  
9 have two things, one more comment that's a little  
10 legal and one that's anecdotal.

11 It is baloney, to use a technical term,  
12 to say that this is not a new project in an  
13 environmental sense. The fact that the water has  
14 been allowed to operate for awhile, long time,  
15 does not mean that the plant has. This plant has  
16 had no license to operate, has not operated for  
17 I'm not quite sure what the date their license  
18 expired was, but I believe it's January of 2003.  
19 You'll have it in your record, you can check the  
20 accuracy of the date.

21 The fact is it operated at a very low  
22 level because it was not financially useful to  
23 operate it more for many years before that. And  
24 has not operated at all since they lost their  
25 license, and cannot operate. This will be a new

1 plant for all practical purposes, for all real  
2 purposes on the coast of California. Not an  
3 amendment to an existing plant because that plant,  
4 as a power plant, has no license to operate.

5 And, in fact, -- this is the legal part  
6 of this comment -- this applicant and this  
7 Commission, it seems to me, are estopped to claim  
8 that is an existing plant because the applicant  
9 asked for and the Commission granted credit toward  
10 its air pollution mitigation, because it stated it  
11 stopped operating the old plant. They got  
12 specific credit for the fact that it was letting  
13 that plant go out of service.

14 So on this record, in this proceeding,  
15 this is a nonoperating plant for air pollution  
16 purposes, how can it be an operating plant for  
17 water pollution purposes?

18 Finally, I would say -- the reason I  
19 used the word estoppel is that that was to the  
20 benefit of the applicant and if you consider your  
21 duty to get this thing licensed a benefit without  
22 charging the applicant money, a benefit to you.  
23 And it was surely a detriment to the citizens of  
24 California in the air pollution area, because they  
25 get less air pollution mitigation than the would

1 have if the plant had been treated as operating.

2 And finally, it was based on the  
3 representation of the applicant that it would not,  
4 could not, and did not operate this plant.

5 Finally, I've got an anecdotal fact. As  
6 those of you who have been through this process  
7 from the beginning almost all know, because you've  
8 been here, my house is -- I'm lucky to have a nice  
9 view of the Pacific Ocean. I can see most of  
10 Santa Monica Bay out my windows.

11 I can see, as we sit here, two tankers,  
12 one tugboat and one commercial fishing boat. The  
13 fishing boat, the only fishing boat that I can see  
14 at the moment in Santa Monica Bay happens to be  
15 parked, literally, and has been since Tom Luster  
16 was speaking, between the buoy of El Segundo Power  
17 Plant water. Sort of a white one and the red one,  
18 if you want to know where.

19 Now, I don't know, because I'm neither a  
20 scientist nor a fisherman, whether there is more  
21 fish there than elsewhere. And you don't know  
22 because you haven't done the study. But somebody  
23 seems to think that that is a locally specific  
24 place that is worthy of their interest with  
25 respect to fish.

1 I suggest you should have a specific  
2 local study to determine whether it's because  
3 there are, in fact, -- well, not because the fish  
4 boat is there, because the power plant is there --  
5 whether there are conditions at that location that  
6 require mitigation.

7 Thanks.

8 CHAIRMAN KEESE: Thank you, Mr. Perkins.  
9 We'll hear now from Bob Waden, Manhattan Beach.

10 MS. JESTER: -- I'm here with Bob Waden.  
11 I'd like you to --

12 CHAIRMAN KEESE: I'm sorry. Indicate  
13 who you are, again?

14 MS. JESTER: I'm sorry, what?

15 CHAIRMAN KEESE: We didn't hear your  
16 name.

17 MS. JESTER: Laurie Jester; I'm the  
18 Senior Planner with the City of Manhattan Beach.  
19 And I'm here with Bob Waden.

20 CHAIRMAN KEESE: Thank you.

21 MS. JESTER: I'd like to direct you to  
22 our letter dated December 20th, that we submitted.  
23 And this letter is consistent with previous  
24 letters that we've submitted in the past.

25 Basically our concern is with the

1 fundamental intent of CEQA. CEQA indicates that  
2 you should identify the impacts of a project.  
3 That you should study those impacts. And you  
4 should evaluate those impacts on the environment,  
5 both on a project level, as well as a cumulative  
6 impact. And then make a decision based on that  
7 analysis.

8 The problem here is that this decision  
9 that you're looking at does not follow that  
10 process. And that's our concern.

11 To use an analogy that I think we all  
12 can relate to, if you were to have a traffic study  
13 that was done for this project that was five or  
14 ten or 30 years old, and then you used that and  
15 you base your decision on that. And you said,  
16 well, we'll base our decision on that, but we'll  
17 also require a regional study of someone like MTA  
18 or Caltrans or another regional agency do that  
19 study, that would not be adequate under CEQA.  
20 This is a very similar condition.

21 We don't believe that you are adequately  
22 addressing CEQA. A 316-type (b) study needs to be  
23 completed prior to a decision on this project.

24 Thank you.

25 CHAIRMAN KEESE: Thank you. Mr. Bill

1 Brand.

2 MR. BRAND: -- gentlemen, for the  
3 opportunity to speak. I live in Redondo Beach and  
4 drive by this plant every day. And I surf and  
5 swim in these waters on a regular basis since  
6 1966.

7 And I've been listening carefully, and I  
8 have a vested interest in what happens here,  
9 because Redondo Beach is not far from the AS Power  
10 Plant site. And of all the things I've heard  
11 here, honestly the thing that struck me the most  
12 is the comment Mr. McKinsey made, as it relates to  
13 Santa Monica Bay, that the density of wildlife in  
14 Santa Monica Bay is small.

15 And I must say I've seen a lot of  
16 historical pictures of what's happened here in  
17 Redondo Beach over the years. And going way back,  
18 when we had a fishing industry, they were catching  
19 200- and 300-pound sea bass off of our coastline.

20 So while it may not be dense now, I  
21 don't think looking at these old pictures anyone  
22 would argue that it certainly was denser back when  
23 long before -- well, actually they did have a  
24 small, once-through cooling, plant there. But it  
25 has certainly changed as a result of all the

1 industrial activity, which would include  
2 Scattergood, El Segundo and what is now the AS  
3 Power Plant site.

4 I added up some numbers, did some rough  
5 math, could be wrong, did it quickly, but I don't  
6 think so. Looking at the flow rates and assuming  
7 Scattergood's also 900 million gallon per day  
8 discharger, along with AS and Redondo Beach and  
9 what El Segundo is proposing, it looks like it  
10 takes about four years before you suck in 25  
11 percent of the entire Santa Monica Bay.

12 And to think that that -- really to  
13 assume that that doesn't have an important impact  
14 into the wildlife of Santa Monica Bay, without  
15 doing further study, I think is very remiss in  
16 your -- in what should be your charge as the  
17 California Energy Commission.

18 Five million dollars honestly strikes me  
19 as kind of a payoff if it's done after the project  
20 is completed or certainly after they've got the  
21 funding and they're moving forward. I think the  
22 study has to be done before any construction is  
23 begun, needs to be completed. The results need to  
24 be assessed, and any mitigation measures have to  
25 be identified and made mandatory long before

1 construction is approved.

2 And that kind of goes to Mr. Geesman's  
3 comment in regard to the industry as a whole, and  
4 how hindsight may be 20/20, but if there was a  
5 vested interest in being sure you weren't harming  
6 the environment, the applicant's El Segundo Power  
7 would have commissioned a study a long time ago.

8 And if this is such an important area  
9 for them to provide power, then, you know, they  
10 should follow the law and do what is right. Obey  
11 CEQA, obey the Coastal Act. Something that is  
12 most important, of course, is not just simply a  
13 steady-as-you-go, not simply a philosophy of not  
14 doing further harm, but the Coastal Act calls for  
15 restoration and enhancement. And so it seems to  
16 me what I've heard here is that the applicant is  
17 asking to be allowed to continue to operate as-is.  
18 And I don't see any restoration or enhancement in  
19 their proposal.

20 So, once again, I think you should deny  
21 this until a study is completed and the results  
22 assessed, any mitigation measures identified, and  
23 made mandatory.

24 Thank you.

25 CHAIRMAN KEESE: Thank you. And that

1 is the last from this that I have an indication  
2 who wish to speak over the phone.

3 We've heard from the applicant, staff  
4 and intervenors and other interested parties. I  
5 think that we still have two issues remaining, Mr.  
6 McKinsey, you were going to put before us  
7 specifics of the amendments you were asking us  
8 to --

9 MR. MCKINSEY: Chairman Keese, I did  
10 read in specific proposed changes to Bio-1 and  
11 Bio-3. In light of what I heard, both in your  
12 opening statements and in the dialogue that we  
13 engaged in, we've got a different proposal for  
14 Bio-1 that we would rather table that I think may  
15 meet the intent of what the Commission seeks.

16 And so I would like to read that one.  
17 It's very straightforward. What we had previously  
18 proposed was that the date for the payment of the  
19 money be no earlier than the start of construction  
20 or 90 days within start of construction.

21 However, hearing what I think is an  
22 understanding of a desire that something be able  
23 to get started immediately, and frankly, from our  
24 experience and perceptions and knowledge about  
25 what it takes to put together protocols and

1       conduct a study, we would like to replace the  
2       second sentence in Bio-1. That is the at least --

3               CHAIRMAN KEESE: Do you have -- for my  
4       benefit, do you happen to have a page reference?

5               MR. McKINSEY: It's the condition that  
6       appears at the end of the bio section at about  
7       page 7--

8               CHAIRMAN KEESE: 73?

9               MR. McKINSEY: -- 73 --

10              CHAIRMAN KEESE: Okay, I'm at Bio-1;  
11       thank you.

12              MR. McKINSEY: The second sentence which  
13       reads: At least \$1 million shall be provided." We  
14       would propose this sentence: At least \$100,000  
15       shall be placed in trust within 60 days after this  
16       decision becomes final, and \$100,000 more within  
17       the next 180 days. The remainder of the funds  
18       shall be provided within 90 days of the start of  
19       construction of the new generating units."

20              And our intent with that change is to  
21       allow the beginnings, in fact even earlier, I  
22       think, than what you had sought of the formulation  
23       of a group to attempt to figure out what the  
24       protocols and processes would be. And frankly, I  
25       think they will take awhile because there has not

1       been a bay-wide study done before. And so it's a  
2       very different type of undertaking.

3               And so that is our proposed change to  
4       Bio-1 instead of the change that we had proposed  
5       earlier.

6               CHAIRMAN KEESE: So if I understood that  
7       right, that was \$100,000 within 60 days; another  
8       \$100,000 within another 60 days?

9               MR. McKINSEY: Another 180 days.

10              CHAIRMAN KEESE: The second one is 180  
11       days?

12              MR. McKINSEY: Correct.

13              CHAIRMAN KEESE: And \$1 million  
14       within --

15              MR. McKINSEY: The remainder --

16              CHAIRMAN KEESE: -- 90 days of starting,  
17       or the remainder --

18              MR. McKINSEY: It would be the  
19       remainder.

20              CHAIRMAN KEESE: -- of the million?

21              MR. McKINSEY: Of the five.

22              CHAIRMAN KEESE: Of the five. And at  
23       that point, then, we'd go to the construction  
24       schedule -- I mean, sorry, the schedule for the  
25       project to be done by the Restoration Commission

1 worked out with the parties and the CPM?

2 MR. McKINSEY: Correct.

3 CHAIRMAN KEESE: Is that --

4 MR. McKINSEY: So that is what we  
5 propose instead of the 90 days prior to the start  
6 of construction, or within construction proposal  
7 that we made earlier to Bio-1.

8 CHAIRMAN KEESE: I wish we had the  
9 Restoration Commission here, as we've had at most  
10 of our other hearings.

11 Commissioner Boyd.

12 COMMISSIONER BOYD: Mr. Chairman, I'm  
13 sympathetic to the timing issue involved. I'm a  
14 little concerned about the amount of money, quite  
15 frankly. And frankly, sketched out some notes  
16 here, similar to this, but it was \$250,000 within,  
17 and I'm willing to accept 60 days, and another  
18 \$250,000 thereafter. And then the balance as  
19 required.

20 Just to provide enough seed money to get  
21 this going and get it going quickly, as I think is  
22 the consensus of many of us. I don't know the  
23 sentiments of my fellow Commissioners.

24 CHAIRMAN KEESE: \$250,000 in 60 days,  
25 and \$250,000 --

1 COMMISSIONER BOYD: At the 180 day time  
2 period thereafter, to adopt their time schedule.

3 CHAIRMAN KEESE: And the balance on  
4 start of construction. Commissioner Geesman.

5 PRESIDING MEMBER GEESMAN: I'll leave  
6 to you financial types the timing and amounts.  
7 But I would say that in my judgment in order to  
8 satisfy the enhancement and restoration provisions  
9 of the Coastal Act that we need to make some  
10 findings on, I think the broader study is  
11 important and that it needs to be initiated right  
12 away.

13 I don't think deferring the balance of  
14 the study until after the plant is operational  
15 goes far enough in satisfying those requirements  
16 of the Coastal Act.

17 I disagree with the way the Coastal  
18 Commission's letter and presentation today would  
19 construe those requirements, but I think that we  
20 need to be focused on the broader study and making  
21 that as meaningful a study as possible, which I  
22 believe was the intent of the Committee proposal.

23 COMMISSIONER PFANNENSTIEL: Mr.  
24 Chairman.

25 CHAIRMAN KEESE: Commissioner

1 Pfannenstiel.

2 COMMISSIONER PFANNENSTIEL: I agree  
3 that, and I think from everything we've heard  
4 today that we really need to get moving on this  
5 study. I think that the proposed decision  
6 articulates well that this broader study should  
7 provide some basic information that then can be  
8 used, if necessary, in a more defined a more site-  
9 specific study.

10 So, I agree with Commissioner Geesman.  
11 I think we need to get moving on this rather than  
12 waiting until the plant is under construction. In  
13 terms of how quickly the first dollars flow, I  
14 actually thought that the language in the current  
15 draft decision of the million dollars within 180  
16 days seemed reasonable to me. And then get moving  
17 soon after that with the remainder.

18 CHAIRMAN KEESE: Commissioner Boyd --  
19 well, why don't -- let me ask if any, since we're  
20 having this colloquy between the applicant and the  
21 Commission, does staff wish to say anything? Mr.  
22 Luster? Comment on this?

23 I know you're --

24 MR. ABELSON: We have no comment.

25 CHAIRMAN KEESE: -- you'd prefer that we

1 didn't do the \$5 million study, that we took other  
2 action instead of that action, so I don't know  
3 that you care to comment on this.

4 Mr. Luster?

5 MR. LUSTER: Just one quick comment.

6 This whole discussion, to me, points out the  
7 arbitrary nature of the purpose of the study, the  
8 role of the study in determining impacts of this  
9 proposed development, rather than some vague  
10 health of the Bay. Brings into question a nexus  
11 between your requirement for this proposed  
12 development and the study, and discussions of  
13 amounts and timing.

14 This is something that should be worked  
15 out well in advance of the decision so that you  
16 know what the money's going to be spent for, you  
17 know, what the intended results are going to be.  
18 And those results provide an idea of possible  
19 changes to the proposed project and necessary  
20 mitigation measures.

21 CHAIRMAN KEESE: I think your point is  
22 well taken to a certain extent. And that is we're  
23 dealing with enhancement here. And I suppose a  
24 316(b) study would enhance at a particular -- a  
25 316(b) like study, and I don't really like to say

1       that because we keep saying that's Regional  
2       Water's responsibility, those are 316(b), but a  
3       point-source study might have a benefit in  
4       enhancement.

5               It seems to the Committee that a Santa  
6       Monica Bay study would enhance the Bay better, and  
7       would enhance the area where this particular  
8       intake exists also. So the Committee was seeking  
9       the best we could get out of this.

10              Now we recognize the Restoration  
11       Commission is not a part of this proceeding,  
12       although they testified at most of our hearings  
13       and workshops. And we can't give them direct  
14       guidance. We can guide the applicant as to what  
15       we suggest the applicant should send their way.  
16       And knowing that the Coastal Commission and  
17       Resources and many other parties, I think, Save  
18       the Bay, sit on the Restoration Committee, you can  
19       guide that study, that group that rules at the  
20       Restoration Commission. Can guide this study.

21              And I cannot believe that one would  
22       suggest that this would not enhance, that a study  
23       of this sort would not enhance Santa Monica Bay.  
24       It will inform all other activities that take  
25       place in the Bay henceforth.

1 MR. LUSTER: Oh, I agree that it may.  
2 It's surprising to hear that the Energy  
3 Commission, the decisionmaking body in this  
4 deliberation, can only suggest or, you know,  
5 recommend some things that another future or  
6 another agency may or may not do in the future.  
7 That is not the purpose of your review. And  
8 that's not the reason that we've been involved for  
9 four years.

10 COMMISSIONER BOYD: Mr. Chairman.

11 CHAIRMAN KEESE: Commissioner Boyd.

12 COMMISSIONER BOYD: I remain concerned,  
13 not disappointed, with the heavy concentration on  
14 process rather than substance that I'm hearing  
15 today, and that I've heard a lot of in the past,  
16 as it relates to the water intake in the Bay.

17 I'm going to choose a crude analogy, and  
18 that's the forest for the trees, because I can't  
19 find a water-based similar analogy. But, the  
20 heavy concentration on the effects of this intake,  
21 and the 316(b) study around the intake, to me, is  
22 the tree and its immediate surrounds, or its  
23 immediate environment, while the Bay is the  
24 forest. And the Bay is an ecosystem in distress.  
25 Many many many people have indicated it's an

1       impaired water body.

2               Some opponents of the Committee's  
3       recommendations have indicated today that knowing  
4       the status of the Bay is needed, and why haven't  
5       studies been done. The fishing industry is  
6       concerned about the status of the Bay. And I'm  
7       just building on what you just said about the  
8       value of a bay-wide study.

9               Hindsight is wonderful, we've discussed  
10       it for several hours now. But we are where we are  
11       here today. I picked this thing up less than a  
12       year ago. And a lot has changed in the four  
13       years, including the status of the need for  
14       electricity in southern California.

15              I'm going to make a motion that we  
16       approve the Committee report, as modified by the  
17       errata, and perhaps some other adjustments that  
18       we've talked about, and yielding to the wisdom of  
19       a couple of my fellow Commissioners who have  
20       spoken up, that really strikes a chord with me,  
21       quite frankly, about the need for dollars upfront.

22              I'm going to include in my motion that  
23       \$250,000 be provided within 30 days of  
24       certification, and \$250,000 be provided every  
25       three months thereafter until we have a million

1 dollar total within a year to finance this study.  
2 With the rest being in accordance with the  
3 originally drafted provisions.

4 So, I so move, Mr. Chairman.

5 PRESIDING MEMBER GEESMAN: I'll second  
6 that, Mr. Chairman. And at the appropriate time I  
7 have a question for our general counsel.

8 CHAIRMAN KEESE: Motion, Boyd; second,  
9 Geesman. Mr. Chamberlain, a question.

10 PRESIDING MEMBER GEESMAN: In light of  
11 the views expressed by the Coastal Commission in  
12 its letter yesterday and its verbal comments  
13 today, do we need to make the type of override  
14 findings in terms of conformity with the Coastal  
15 Act that we made in Morro Bay?

16 And I believe we prefaced those with the  
17 observation that we felt it was within our legal  
18 authority, but out of an abundance of caution we  
19 would make the override findings, as well. That's  
20 the first question.

21 And then secondly, as it relates to  
22 these two competing study recommendations, I  
23 believe the Committee fully expected that the  
24 recommendation for the comprehensive study would,  
25 in fact, satisfy the Coastal Commission's

1 interests in a study. But the Coastal Commission  
2 has said that they prefer the more narrow study.  
3 Would it be appropriate, then, for us to make a  
4 finding of a greater adverse impact in that  
5 recommendation of the Coastal Commission, and  
6 conform our recommendation to the same which we  
7 have made in Morro Bay most recently?

8 MR. CHAMBERLAIN: Yes, I think that  
9 would be appropriate.

10 PRESIDING MEMBER GEESMAN: Then,  
11 Commissioner Boyd, I would request that your  
12 motion include those two provisions.

13 COMMISSIONER BOYD: I would agreeably  
14 modify my motion to accept those. If my second  
15 will concur.

16 PRESIDING MEMBER GEESMAN: Absolutely.

17 CHAIRMAN KEESE: Yes, at the suggestion  
18 of your second. All right. What we have in front  
19 of us then is our proposed decision with the  
20 errata that was put forward and discussed, with  
21 the addition of a provision on funding, \$250,000  
22 within 30 days, and an additional \$250,000 every  
23 90 days thereafter until the \$1 million has been  
24 advanced. And with the addition of Commissioner  
25 Geesman's language suggestion that the study we

1 are proposing is more beneficial than the point-  
2 source study of a 316(b).

3 Mr. Chamberlain, correct?

4 MR. CHAMBERLAIN: Yes. We will work  
5 with Commissioner Geesman to put that language  
6 into the adoption order.

7 CHAIRMAN KEESE: Thank you. Mr.  
8 McKinsey.

9 MR. MCKINSEY: Chairman Keese, I'm only  
10 wanting to make sure this is not an oversight, but  
11 we had another change requested to the beginning  
12 of Bio-3. That may be intentional, but I just  
13 didn't want the staff to be an issue. That was  
14 the --

15 CHAIRMAN KEESE: The date?

16 MR. MCKINSEY: The commencement of the  
17 timing of the --

18 CHAIRMAN KEESE: Commencement. My  
19 suggestion would be that we accept that. That's  
20 clearly our intent; we thought we'd written it  
21 that way. Do you have any --

22 COMMISSIONER BOYD: Right. We can  
23 include that in the motion.

24 CHAIRMAN KEESE: All right, let's --

25 COMMISSIONER BOYD: -- taken care of it,

1 but I don't have any problem. I personally have  
2 no problem with that language.

3 CHAIRMAN KEESE: All right. We will  
4 incorporate that language in, also. Commencement  
5 of commercial operation.

6 We have it before us.

7 All in favor?

8 (Ayes.)

9 CHAIRMAN KEESE: Opposed? Adopted five  
10 to nothing. Thank you, everyone.

11 DR. REEDE: A comment, Mr. Chairman,  
12 before you go. I'd like to thank staff over the  
13 past four years of working diligently to protect  
14 the resources of the State of California. Many  
15 have sacrificed over the past four years to see  
16 this through, and they deserve recognition for  
17 their hard work, professionalism, and dedication  
18 to seeing the law enforced.

19 CHAIRMAN KEESE: Thank you, Mr. Reede.  
20 And I would like to thank everybody who has borne  
21 with us. We recognize, you know, we have not  
22 discussed much today, but we are under  
23 instructions from the Warren Alquist Act to  
24 complete these proceedings within one year of data  
25 adequacy.

1 Well, we didn't make it four, but we've  
2 worked hard. This Committee has -- both  
3 Committees have been very -- have worked very hard  
4 and spent as much time as any Committee has, as  
5 I'm aware, on a siting case. And attempted to  
6 come up with the best solution for the people of  
7 the State of California.

8 So I thank everyone who has worked in  
9 this process. Thank you, everybody.

10 This will be filed today. Thank you.  
11 We are adjourned.

12 (Whereupon, at 11:22 a.m., the special  
13 business meeting was adjourned.)

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